UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/48/40 (Part I)
7 October 1993

ORIGINAL: ENGLISH

Forty-eighth session

REPORT OF THE HUMAN RIGHTS COMMITTEE*

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* The present document is a mimeographed version of part of the report of the Human Rights Committee. The full report will be issued subsequently as Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40).

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 30 July 1993, the closing date of the forty-eighth session of the Human Rights Committee, 122 States had ratified or acceded to the International Covenant on Civil and Political Rights, and 72 States had ratified or acceded to the Optional Protocol to the Covenant. Both instruments were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966; they entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also, as of 30 July 1993, 42 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979.

2. The Second Optional Protocol aiming at the abolition of the death penalty, which was adopted and opened for signature, ratification or accession by the General Assembly in resolution 44/128 of 15 December 1989, entered into force on 11 July 1991, in accordance with the provisions of its article 8. As of 30 July 1993, there were 19 States parties to the Second Optional Protocol.

3. A list of States parties to the Covenant and to the Optional Protocols, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

4. Reservations and other declarations made by States parties in respect of the Covenant and/or the Optional Protocols are set out in document CCPR/C/2/Rev.3 and in notifications deposited with the Secretary-General. By a note of 30 September 1992, the Government of Belarus notified the Secretary-General of the withdrawal of its reservation to article 48, paragraph 1, of the Covenant. By a note of 19 January 1993, the Government of the Republic of Korea notified the Secretary-General of the withdrawal of its reservation to article 14, paragraph 7, of the Covenant. Similarly, by a note of 2 February 1993, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General of the withdrawal of its reservation to article 25, subparagraph (c), of the Covenant. On 27 April 1993, the Government of Portugal notified the Secretary-General that the Covenant would henceforth apply to Macau.

B. Sessions and agenda

5. The Human Rights Committee has held three sessions since the adoption of its last annual report. 1/ The forty-sixth session (1177th to 1205th meetings) was held at the United Nations Office at Geneva from 19 October to 6 November 1992; the forty-seventh session (1206th to 1233rd meetings) was held at United Nations Headquarters from 22 March to 8 April 1993; and the forty-eighth session (1234th to 1262nd meetings) was held at the United Nations Office at Geneva from 12 to 30 July 1993. The agendas of the sessions are reproduced in annex III to the present report.

C. Election, membership and attendance

6. At the 12th meeting of States parties, held at United Nations Headquarters, on 10 September 1992, nine members of the Committee were elected, in accordance with articles 28 to 32 of the Covenant, to fill vacancies created by the expiration of terms of office on 31 December 1992. The following members were

elected for the first time: Mr. Marco Tulio Bruni Celli, Ms. Elizabeth Evatt and Mr. Laurel B. Francis. Mr. Francisco José Aguilar Urbina, Mr. János Fodor, Mrs. Rosalyn Higgins, Mr. Rajsoomer Lallah, Mr. Andreas V. Mavrommatis and Mr. Fausto Pocar were re-elected. A list of the members of the Committee, as well as its officers, is given in annex II to the present report.

7. All the members attended the forty-sixth session of the Committee. Mr. Ando, Mr. Fodor and Mr. Mavrommatis attended only part of that session. All the members attended the forty-seventh session. All the members attended the forty-eighth session. Mr. Bruni Celli, Mrs. Higgins, Mr. Lallah and Mr. Pocar attended only part of that session.

D. Solemn declaration

8. At the Committee's 1206th meeting (forty-seventh session), members of the Committee who had been elected or re-elected at the 12th meeting of States parties to the Covenant made a solemn declaration before assuming their functions, in accordance with article 38 of the Covenant.

E. Election of officers

9. At its 1106th meeting (forty-seventh session), held on 22 March 1993, the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

Chairperson: Mr. Nisuke Ando

Vice-Chairpersons: Mr. Vojin Dimitrijevic
Mr. Omran El Shafei
Mr. Bertil Wennergren

Rapporteur: Mr. Francisco José Aguilar Urbina

10. The Committee expressed its deep appreciation to Mr. Fausto Pocar, the outgoing Chairperson, for his leadership and outstanding contribution to the success of the Committee's work.

F. Working groups

11. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups to meet before its forty-sixth, forty-seventh and forty-eighth sessions.

12. The working group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol. At the forty-sixth session, the working group was composed of Mrs. Chanet, Mr. El Shafei, Mr. Prado Vallejo, Mr. Sadi and Mr. Wennergren. It met at the United Nations Office at Geneva from 15 to 19 October 1992 and elected Mrs. Chanet as its Chairperson-Rapporteur. At the forty-seventh session, the working group was composed of Mr. Fodor, Mrs. Higgins, Mr. Ndiaye, Mr. Prado Vallejo and Mr. Sadi. It met at United Nations Headquarters from 15 to 19 March 1993 and elected Mrs. Higgins as its Chairperson-Rapporteur. At the forty-eighth session, the working group was composed of Mr. Fodor, Mr. Mavrommatis, Mr. Ndiaye, Mr. Prado Vallejo and Mr. Sadi. It met at the United Nations Office at Geneva from 5 to 9 July 1993 and elected Mr. Mavrommatis as its Chairperson-Rapporteur.

13. The working group established under rule 62 was mandated to prepare lists of issues concerning second and third periodic reports scheduled for consideration at the Committee's forty-sixth, forty-seventh and forty-eighth sessions and to consider any draft general comments that might be put before it. Additionally, the working group that met before the forty-eighth session was requested to review the Committee's procedures under article 40 of the Covenant in the light of the discussion on that subject at the Committee's forty-seventh session. At the forty-sixth session, the working group was composed of Mr. Aguilar Urbina, Mr. Dimitrijevic, Mr. Ndiaye and Mr. Wennergren. It met at the United Nations Office at Geneva from 12 to 16 October 1992 and elected Mr. Aguilar Urbina as its Chairperson-Rapporteur. At the forty-seventh session, the working group was composed of Mr. Aguilar Urbina, Mr. Ando and Mr. Wennergren. It met at United Nations Headquarters from 15 to 19 March 1993 and elected Mr. Aguilar Urbina as its Chairperson-Rapporteur. At the forty-eighth session, the group was composed of Mr. Aguilar Urbina, Mr. Dimitrijevic and Mr. Wennergren. It met at the United Nations Office at Geneva from 5 to 9 July 1992 and elected Mr. Wennergren as its Chairperson-Rapporteur.

G. Other matters

Forty-sixth session

14. The Committee was informed by the Under-Secretary-General for Human Rights of the report of the Secretary-General on the work of the Organization submitted to the General Assembly at its forty-seventh session and took note with interest of the suggestion by the Secretary-General that expert human rights bodies might be empowered to bring massive human rights violations to the attention of the Security Council, together with recommendations for action. The Under-Secretary-General also informed members that the Commission on Human Rights, under the procedure established by Economic and Social Council resolution 1990/48, had held its first special session on 13 and 14 August 1992, devoted to the serious human rights situation in the former Yugoslavia. Among the material brought to the Commission's attention had been the comments adopted by the Committee in connection with its consideration of the third periodic report of Yugoslavia in March 1992. Members were also briefed on the fourth meeting of the persons chairing the human rights treaty bodies, on recent activities of the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the programme of advisory services of the Centre for Human Rights, as well as on the third session of the Preparatory Committee for the World Conference on Human Rights.

15. The Committee confirmed on 19 October 1992 (1178th meeting) a decision taken on 7 October 1992, through its Chairperson acting on behalf of and in consultation with the members of the Committee, whereby the Governments of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) were requested to submit special reports on events affecting human rights protected under the Covenant in respect of persons and events now coming under their jurisdiction (see para. 36 and annex VII below). The Committee also agreed that, in the case of an exceptional situation arising in the future when the Committee was not in session, a request for submission of a report should be made through the Chairperson acting in consultation with the members of the Committee and decided that a text amending the Committee's rules of procedure in that regard should be presented for adoption at the Committee's forty-seventh session.

Forty-seventh session

16. The Committee was informed by the representative of the Secretary-General that Mr. Ibrahima Fall had been appointed Assistant Secretary-General for Human Rights to succeed Mr. Antoine Blanca as head of the Centre for Human Rights. The Committee was informed of the adoption by the General Assembly in its resolution 47/135 of 18 December 1992. The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities and of the decision of the Security Council in its resolution 808 (1993) of 22 February 1993, to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

17. Members were also informed of the actions taken by the Commission on Human Rights at its forty-ninth session and welcomed the Commission's request to States parties duly to take into account, in implementing the provisions of the Covenant, the Committee's concluding observations. Members were also briefed on recent activities of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the programme of advisory services of the Centre for Human Rights.

18. The Committee discussed in detail the possibility of modifying its methods of work under article 40 of the Covenant. Various suggestions were made to adapt the Committee's procedures in dealing with emergency situations. The possibility of making known the Committee's views on matters within its competence, as well as its comments on States parties' reports, particularly on reports submitted pursuant to special decisions taken by the Committee, to the appropriate United Nations bodies, including the Security Council, was envisaged. It was also considered that, when it had not been able to ascertain whether its recommendations included in its concluding observations had been acted upon, the Committee might request the State party concerned to accept a mission, consisting of one or two members of the Committee, with a view to learning the responses of the State concerned to the specific proposals for the better enjoyment of human rights. The working group that was to meet prior to the forty-eighth session was requested to study the matter further.

19. In order to react more efficiently to exceptional situations arising when the Committee was not in session, on 8 April 1993 (1233rd meeting) the Committee amended its rules of procedure to the effect that, in such circumstances, a request for the submission of a report might be made through the Chairperson, acting in consultation with the members of the Committee (see annex IX).

H. Publicity for the work of the Committee

20. The Chairperson, accompanied by other officers, held press briefings during each of the Committee's three sessions. The Committee noted with satisfaction the increased level of interest in its activities shown by the media and non-governmental organizations.

I. Yearbook (Official Records) of the Human Right Committee

21. The Committee was informed that the Yearbook for 1987 had just been published. Noting with appreciation the contribution made by the Sasakawa Foundation to facilitate the publication of the Yearbooks of the Committee, it expressed the hope that the backlog would be eliminated as soon as possible and that the Yearbook would henceforth be published on a regular and timely basis.

J. Future meetings of the Committee

22. At its forty-seventh session, the Committee confirmed its calendar of meetings for 1994-1995, as follows: the fiftieth session was to be held at United Nations Headquarters from 21 March to 8 April 1994; the fifty-first session at the United Nations Office at Geneva from 11 to 29 July 1994; the fifty-second session also at the United Nations Office at Geneva from 17 October to 4 November 1994; the fifty-third session at United Nations Headquarters from 20 March to 7 April 1995; the fifty-fourth session at the United Nations Office at Geneva from 10 to 28 July 1995 and the fifty-fifth session also at the United Nations Office at Geneva from 16 October to 3 November 1995. In each case the Committee's working groups would meet during the week preceding the session.

23. At its forty-eighth session, the Committee decided to request that its fifty-first session be extended by one week to allow for additional time to deal with the heavy backlog of communications under the Optional Protocol and reports from States parties.

K. Adoption of the report

24. At its 1260th, 1261st and 1262nd meetings, held on 29 and 30 July 1993, the Committee considered the draft of its seventeenth annual report, covering its activities at the forty-sixth, forty-seventh and forty-eighth sessions, held in 1992 and 1993. The report, as amended in the course of the discussion, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION

25. At its 1228th and 1229th meetings, held on 6 April 1993, the Committee considered the agenda item in the light of the relevant summary records of the Third Committee, General Assembly resolution 47/111 of 16 December 1992 and Commission on Human Rights resolution 1993/15 of 26 February 1993.

26. The Committee noted that, pursuant to General Assembly resolution 45/175 of 18 December 1990, substantive resolutions on treaty-based bodies were to be adopted biennially ("odd years") and that, consequently, at its forty-seventh session the Third Committee only took note of its report.

27. With reference to the discussion within the General Assembly relating to the effective implementation of human rights instruments and the effective functioning of human rights treaty bodies, the Committee noted with satisfaction that States resulting from the dissolution of former parties to human rights instruments had been called upon to send official notifications regarding the continued applicability of the relevant treaties. The Committee also noted, with particular satisfaction, the positive comments made in the Third Committee by delegations on the innovations that had been introduced in its methods of work, notably in relation to the formulation of comments by the Committee on each State report and the decision to request urgent reports when necessary to monitor serious situations.

28. The Committee discussed the relevant resolutions adopted by the Commission on Human Rights at its forty-eighth session and expressed strong agreement, in particular, with the recommendation that countries having difficulties in introducing changes in their legislation that might be necessary in advance of ratification of international instruments on human rights should be encouraged to request appropriate support from the Centre for Human Rights under the advisory services and technical assistance programme. The Committee also expressed satisfaction that the Commission had renewed its request to have the recent periodic reports of States parties to treaty-monitoring bodies and the summary records of Committee discussions pertaining to them made available in United Nations information centres in the countries concerned.

29. In accordance with General Assembly resolution 45/155, the World Conference on Human Rights was held at Vienna from 14 to 25 June 1993. During the World Conference, a meeting of the Chairpersons of international and regional human rights treaty-based bodies took place on 15 and 16 June 1993. As a contribution to the World Conference as well as to the meeting, the Human Rights Committee submitted two papers entitled "Work of the Human Rights Committee under article 40 of the Covenant on Civil and Political Rights" (A/CONF.157/TBB/2) and "Follow-up on views adopted under the Optional Protocol to the International Covenant on Civil and Political Rights" (A/CONF.157/TBB/3), respectively (see annex X). The human rights treaty bodies represented at the meeting included the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the African Commission on Human and Peoples' Rights, the European Commission and the European Court of Human Rights, the European Committee for the Prevention of Torture, the Inter-American Commission and the Inter-American Court of Human Rights, and the International Labour Organization (ILO) Committee on the Application of Conventions and Recommendations. Mr. Nisuke Ando, Chairman of the Human Rights Committee, participated in the Conference and represented the Committee at the meeting. Mr. Omran El Shafei and Mr. Fausto Pocar also participated in the Conference, and attended the meeting. Mr. Marco T. Bruni Celli participated in

the meeting as a representative of the Inter-American Commission on Human Rights. At the conclusion of the meeting, the representatives of the international human rights treaty bodies adopted the Vienna Statement of the International Human Rights Treaty Bodies containing specific recommendations to the World Conference (A/CONF.157/TBB/4).

III. REPORTS BY STATES PARTIES SUBMITTED UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

30. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40, paragraph 1 (a), of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and contents of initial reports. 2/

31. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee at its thirteenth session adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 3/ At the same session, the Committee adopted guidelines regarding the form and contents of periodic reports from States parties under article 40, paragraph 1 (b), of the Covenant. 4/ At its thirty-ninth session, the Committee adopted an amendment to its guidelines for the submission of initial and periodic reports relating to reporting by States parties on action taken in response to the issuance by the Committee of Views under the Optional Protocol. 5/ At its forty-second session, the Committee revised its general guidelines for the submission of initial and periodic reports to take into account the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant (HRI/CORE/1). 6/

32. At each of its sessions during the reporting period, the Committee was informed of and considered the status of the submission of reports (see annex IV).

33. The action taken, information received and relevant issues placed before the Committee during the reporting period (forty-sixth to forty-eighth sessions) are summarized in paragraphs 34 to 42 below.

Forty-sixth session

34. The Committee was informed that the third periodic report of Italy had been received. The Committee was also informed that "core documents" prepared in accordance with the consolidated guidelines for the initial part of State party reports had been received from Burundi, Egypt, Ireland and Panama.

Requests for special reports

35. The Committee decided to send reminders to the Governments of Gabon, Equatorial Guinea, Nepal, Malta, Somalia and Zimbabwe whose initial reports were overdue. In addition, the Committee decided to send reminders to the Governments of the following States parties whose second periodic reports were overdue: Argentina, Bolivia, Bulgaria, Cameroon, Central African Republic, Congo, Cyprus, Democratic People's Republic of Korea, El Salvador, Gabon, Gambia, Guyana, Iceland, Jamaica, Kenya, Lebanon, Libyan Arab Jamahiriya, Mali, Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), San Marino, Saint Vincent and the Grenadines, Suriname, Syrian Arab Republic, Togo, Viet Nam, and Zambia. Reminders were also sent to the following Governments whose third periodic reports were overdue: Australia, Barbados, Bulgaria, Central African Republic, Costa Rica, Cyprus,

Denmark, El Salvador, France, Gambia, Guyana, Iceland, India, Jamaica, Kenya, Lebanon, Libyan Arab Jamahiriya, Mali, Mauritius, Netherlands, New Zealand, Nicaragua, Panama, Portugal, Rwanda, Sri Lanka, Suriname, Syrian Arab Republic, Trinidad and Tobago and Zaire.

36. Deeply concerned by recent events in the territory of the former Yugoslavia affecting human rights protected under the Covenant, having noted that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant, finding that the new States within the boundaries of the former Yugoslavia succeeded to the obligations of the former Yugoslavia under the Covenant in so far as their respective territories were concerned, and acting under article 40, paragraph 1 (b), of the Covenant, the Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee, requested on 7 October 1992, shortly before the session, the Governments of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit a special report in respect of persons and events now coming under their jurisdictions. That decision was confirmed by the Committee on 19 October 1992 (1178th meeting). Subsequently, such reports were received from the three Governments (see annex VII).

Forty-seventh session

37. The Committee was informed that the second periodic reports of Bulgaria, Cameroon and the Libyan Arab Jamahiriya, the third periodic report of Costa Rica and the fourth periodic report of Tunisia had been received. Core documents had also been received from Morocco, Paraguay, Poland, Portugal and Zambia.

38. In view of the growing number of outstanding State party reports, the Committee agreed that its officers should meet in New York with the permanent representatives of all States parties whose initial or periodic reports had been overdue for more than three years. Accordingly, contacts were made with the Permanent Representatives of Cyprus, the Democratic People's Republic of Korea, Denmark, Gabon, the Gambia, Guyana, Iceland, Jamaica, Kenya, Lebanon, Mali, the Netherlands, New Zealand, Suriname, the Syrian Arab Republic and Trinidad and Tobago. It was not possible to establish contact with the Permanent Representatives of the Central African Republic, the Congo and Equatorial Guinea.

39. In addition, the Committee decided to send reminders to the Governments of Albania, Estonia, Gabon, Grenada, Equatorial Guinea, Israel, Lithuania, Nepal, Somalia and Zimbabwe whose initial reports were overdue. Reminders were also sent to the Governments of the following States parties whose second periodic reports were overdue: Argentina, Bolivia, Central African Republic, the Congo, Cyprus, the Democratic People's Republic of Korea, Gabon, the Gambia, Guyana, Jamaica, Kenya, Lebanon, Mali, the Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Philippines, Saint Vincent and the Grenadines, San Marino, Suriname, Syrian Arab Republic, Togo, Viet Nam and Zambia. Reminders were also sent to the following Governments whose third periodic reports were overdue: Australia, Barbados, Central African Republic, Cyprus, the Democratic People's Republic of Korea, Denmark, France, the Gambia, Guyana, India, Jamaica, Kenya, Lebanon, Madagascar, Mali, Mauritius, Morocco, the Netherlands, New Zealand, Nicaragua, Panama, Portugal, Rwanda, Saint Vincent and the Grenadines, Sri Lanka, Suriname, Syrian Arab Republic and Trinidad and Tobago.

40. In view of the special difficulties encountered by El Salvador, Haiti, the Sudan and Zaire in the implementation of the Covenant, the Committee decided to send a special reminder urging them to submit their initial or periodic reports as rapidly as possible. The texts of the letters, dated 12 May 1993, from the

Chairman of the Committee to the Minister for Foreign Affairs of El Salvador, Haiti, the Sudan and Zaire are reproduced in annex VIII to the present report.

41. Considering that all the peoples within the territory of a former State party to the Covenant remained entitled to the guarantees of the Covenant, and that Armenia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan were bound by the obligations under the Covenant as from the date of their independence, the Committee noted that reports under article 40 of the Covenant became due one year after that date and requested, in notes verbales dated 28 May 1993 addressed to the Minister for Foreign Affairs of those States, that such reports be submitted to it.

Forty-eighth session

42. The Committee was informed that the initial reports of Malta, Latvia and the second periodic reports of Cyprus, Iceland and Yemen as well as the third periodic report of Morocco had been received. Core documents had also been received from Cyprus, Lebanon, Madagascar and Switzerland.

B. Consideration of reports

43. During its forty-sixth, forty-seventh and forty-eighth sessions, the Committee considered the initial reports of Burundi, Ireland and Niger; the second periodic reports of Bulgaria, Egypt, Guinea, the Islamic Republic of Iran, Luxembourg, the United Republic of Tanzania and Venezuela; and the third periodic reports of the Dominican Republic, Hungary, Senegal and Uruguay. At its forty-sixth session, the Committee also considered the special reports submitted by Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Summaries of the consideration by the Committee of States parties' reports

44. The following sections relating to States parties are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its forty-sixth, forty-seventh and forty-eighth sessions. These sections are only summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports of and additional information submitted by the States parties concerned 7/ and in the summary records referred to.

Burundi

45. The Committee considered the initial report of Burundi (CCPR/C/68/Add.2) and the core document forming the initial part of reports under the various international human rights instruments (HRI/CORE/1/Add.16) at its 1178th, 1182nd and 1183rd meetings on 19, 21 and 22 October 1992 (CCPR/C/SR.1178, 1182 and 1183). (For the composition of the delegation, see annex XI.)

46. The report was introduced by the representative of the State party, who indicated that, since 1987, the authorities had been working to put an end to the situation of division and violence in the country. The long process of dialogue that had been initiated had led to the drafting of the Charter of National Unity and the new Constitution, which had won a nearly 90 per cent vote of approval in referendums held in February and March 1992. A national commission had been set up for the return, reception and reintegration of refugees. Some 40,000 persons had returned to Burundi under the voluntary repatriation programme, despite attacks by the Hutu People's Liberation Party.

47. The representative drew attention to the human rights provisions introduced in the new Constitution of March 1992. The measures taken in favour of the promotion of human rights extended to the recognition of democracy based on political pluralism. Seven groupings had already been authorized as political parties under a law promulgated in April 1992 and legislative and presidential elections were scheduled for March 1993. Bearing in mind its level of social and cultural development, however, Burundi still had many obstacles to overcome on the path to democracy, social justice and development.

48. The members of the Committee welcomed with satisfaction the initial report of Burundi, which had been submitted shortly after it had been due, and thanked the State party for the core document forming the initial part of reports under the various international human rights instruments (HRI/CORE/1/Add.16). They nevertheless regretted that, because the report contained only a brief description of the legal provisions in force and did not refer to practice or the factors and difficulties impeding the implementation of the Covenant, it was not in keeping with the Committee's guidelines on the preparation of reports.

49. With regard to article 2 of the Covenant, the members of the Committee requested information on the hierarchy of legal norms in Burundi, the status of the Covenant in internal law, the relationship between the Constitution and the Charter of National Unity, the work in progress on the drafting of a new Penal Code and a new Code of Penal Procedure and the tasks of the Centre for the Promotion of Human Rights in Burundi. It was also asked how possible conflicts between the provisions of the Constitution and the Covenant and those of ordinary law were settled, whether the text of the Covenant had been translated into the various local languages, how the authorities had made known the Constitution and the Charter of National Unity to illiterate members of the population and what the powers of the National Security Council were.

50. In respect of article 3 of the Covenant, the members of the Committee asked what specific measures had been taken to promote the equality of men and women, how the nationality of parents was transmitted to children and what provisions governed the property of the spouses in marriage and the custody of children.

51. Referring to article 4 of the Covenant, the members of the Committee asked whether the rights mentioned in article 4, paragraph 2, of the Covenant could be derogated from during a state of emergency, whether the Secretary-General had been notified of the proclamation of the state of emergency and what derogations to the Covenant had been made at that time.

52. In connection with articles 6, 7, 9 and 10 of the Covenant, the members of the Committee asked in what cases the death penalty could be handed down, in how many cases it had been applied in the past, whether there were plans to abolish it, what law regulated the use of force by the police, whether controls had been established to ensure that persons arrested or detained, particularly in police stations, were not subjected to torture or ill-treatment, whether the Code of Penal Procedure did or would establish machinery for the conduct of independent and impartial investigations into allegations of torture, whether persons responsible for such acts were brought to justice and punished, what measures were taken to avoid overcrowding in detention centres, whether the Standard Minimum Rules for the Treatment of Prisoners were observed and whether the relevant rules were known to prisoners and law enforcement officials. It was asked how long it took before a person in custody was brought before a judge, what measures were taken to prevent abusive arrests and pre-trial detention and whether there was a remedy in Burundi law similar to that of habeas corpus.

53. Clarifications were requested on the events of November 1991 and March 1992 that had allegedly resulted in mass arbitrary arrests, enforced or involuntary

disappearances, summary or arbitrary executions, many cases of torture and ill-treatment and serious breaches of the Standard Minimum Rules for the Treatment of Prisoners. It was asked whether those tragic events had been investigated, whether the individual responsibility of soldiers or gendarmes in those events had been established and how many members of the armed forces and gendarmerie had been prosecuted.

54. With regard to articles 12 and 13 of the Covenant, the members of the Committee requested further information on the problem of the voluntary repatriation of refugees to Burundi. It was asked whether such repatriation was in accordance with article 33 of the Convention relating to the Status of Refugees and article 18 of the Covenant, whether a general amnesty law was being envisaged and what the functions and activities of the National Commission for the Return, Reception and Reintegration of Refugees were.

55. In respect of article 14 of the Covenant, the members of the Committee asked whether the principle of the irremovability of judges existed in Burundi, how the independence and impartiality of the judiciary were guaranteed, what powers the Judicial Supervisory Commission and the Mandi Commission had, particularly as far as detention was concerned, whether there were political prisoners or prisoners of opinion arrested or detained in Burundi for opposing the Government, what measures had been taken to guarantee their right of defence and what jurisdiction military courts had.

56. Referring to articles 17, 18 and 19 of the Covenant, the members of the Committee requested information on the media bill and how article 18 of the Covenant was being implemented. They asked whether the media were State owned and whether Burundi and foreign journalists were free to express their opinions.

57. In connection with articles 21, 25 and 27 of the Covenant, the members of the Committee requested further information on the political parties and trade unions that now existed in Burundi, on the conditions in which the Decree-Law of 31 December 1991 making it obligatory to request prior authorization to hold a public demonstration was applied and on the implementation of the provisions according to which political parties were prohibited from identifying themselves with an ethnic group or religion. It was also asked what measures were taken to settle ethnic conflicts, whether the Charter of National Unity had achieved its aim of integrating all citizens into the country's political life, whether the restrictions provided for in articles 55, 56 and 57 of the Constitution were in keeping with articles 19, 22 and 25 of the Covenant, whether the opposition parties could present candidates in communal elections, whether measures had been taken to enable the Hutus, the majority ethnic group, to enter the public service and, in particular, to join the army in general conditions of equality and what was meant by the expression "who enjoy their civil and political rights" in article 3 of the Constitution.

58. In her reply, the representative of the State party said that Burundi had a single people, with a single culture and a single language. It had had many ethnic problems for reasons relating to its monarchical and colonial past and the running of State affairs after independence. In the last few years, however, efforts had been made to bring about national reconciliation, as shown by the adoption of the Charter of National Unity and the new Constitution. Legislative and preventive measures had been taken to educate the people and make them aware of the equality of all before the law. The Government was trying to promote ethnic reconciliation through specific actions aimed at preventing exclusion in all areas of national life, particularly concerning appointments of senior officials and the recruitment of security officials.

59. The provisions of articles 10 to 15 of the Constitution recapitulated the principles enunciated in article 2 of the Covenant. Other texts, such as the Penal Code and the Code of Penal Procedure, reproduced the definition of discrimination contained in the International Convention on the Elimination of All Forms of Racial Discrimination. Measures had been taken to promote the principle of the equality of men and women and the rights of children. However, the acceptance of democratic ideas accompanying the emergence of new political parties was still giving rise to problems, especially in rural areas, and there was still some inequality between the sexes as a result of sociocultural problems, particularly as far as the right to inherit was concerned. The Centre for the Promotion of Human Rights had the general task of disseminating information on and increasing awareness of human rights. The Government was endeavouring to make national and international legal instruments known to the illiterate part of the population by organizing rallies and information meetings, as well as radio programmes.

60. Replying to other questions on article 2 of the Covenant, the representative indicated that all the rights and duties embodied in the international human rights instruments were proclaimed in and guaranteed by article 10 of the Constitution. Moreover, the Covenant and the Constitution naturally prevailed over the Penal Code and the Code of Penal Procedure and, if the latter failed to conform to the Covenant or the Constitution, they were automatically amended or annulled by the Appeals Division. The Charter of National Unity was not accompanied by any legal or regulatory sanctions, but had primacy over the law. It was based essentially on the principle embodied in article 20 of the Covenant and was thus fully in conformity with the Covenant.

61. Referring to article 4 of the Covenant, he said that the various legal instruments relating to the maintenance of order and security, the proclamation of a state of emergency or state of siege and the requisitioning of persons and property had been drafted in the light of the need to protect human rights and individual freedoms and to maintain or re-establish law and order. Article 79 of the Constitution, setting forth the special powers of the President of the Republic during a state of exception or emergency, was fully compatible with articles 4 and 9 of the Covenant. In practice, whenever an exceptional measure was taken, for example, during the meningitis epidemic in September 1992, the public was so informed by the media and by the local authorities.

62. With regard to articles 6, 7 and 10 of the Covenant, the representative indicated that, in Burundi, the death penalty could be imposed in cases of assassination, murder, theft followed by murder, cannibalism and torture, rape or abortion resulting in death. Handing down a death sentence, even if it was not carried out, was not a futile act, given the deterrent effect of such a sentence and the infamy it entailed. He also noted that disciplinary and criminal penalties had been applied to security force members who had violated articles 11, 19, 20 and 21 of the Constitution on the individual's right to physical and moral integrity. Although it was undeniable that irregularities had occurred and might reoccur, particularly in the context of ethnic disputes, the competent authorities were endeavouring to ensure respect for the right to life. Detention conditions were consistent with the Standard Minimum Rules for the Treatment of Prisoners. Prisoners were entitled to confer with their lawyers in private.

63. Replying to questions concerning the events of November 1991 and March 1992, he stressed that the human rights violations which had occurred had been the work of an ethnic terrorist faction called the Hutu People's Liberation Party. It took the view that reconciliation was impossible as long as there was ethnic cleansing in Burundi. The members of that faction incited the people to ethnic hatred and sought to deceive international opinion by means of

preposterous untruths to the effect that the Hutus were the victims of massacres by the Tutsi minority. In November 1991, some communes had been struck by terrorist attacks which had claimed 500 victims. Clashes between the law enforcement forces and the aggressors had also resulted in many victims on both sides. Legal proceedings had been brought against the terrorists and their accomplices and had been conducted with the greatest possible openness. Abuses by the police had also been reported and members of the military had been prosecuted for summary executions.

64. Referring to article 9 of the Covenant, the representative indicated that measures had been taken to guarantee the right of a detainee to be informed of the reasons for his arrest, to appear before a judge within a reasonable period of time and to have the assistance of a lawyer. In addition, the Code of Penal Procedure was currently being revised to bring it even more closely into line with the constitutional provisions guaranteeing respect for human rights. According to article 4 of the Code of Penal Procedure, the government attorney carried out a weekly inspection of police station premises and had the power to release any person apprehended by the police where evidence against that person was insufficient.

65. In respect of articles 12 and 13 of the Covenant, the representative of the State party indicated that irregularities in the application of the internal provisions relating to freedom of movement had been noted for the last time in 1978. Since 1989, no one had been required to submit his travel documents to the immigration service. In order to facilitate the reception and integration of returnees, the decree of 22 January 1992 empowered the Commission for the Voluntary Repatriation of Refugees to settle disputes over property claimed by the returnees. The Commission's decisions were not open to appeal in order to facilitate reception conditions and encourage the amicable settlement of any family conflicts which might arise.

66. As to article 14 of the Covenant, the representative of the State party said that the military tribunals were empowered to try military personnel and their civilian accomplices and to judge any crimes and offences involving the use of firearms committed by civilians. The judiciary was separate from the military courts and the decisions of the military courts could be set aside by the Supreme Court. Although there had been cases of pressure by the executive on the judiciary from 1980 to 1985, the 1992 Constitution guaranteed the independence of the judiciary. Measures to dismiss judges were taken by a disciplinary body presided over by the Head of State. In Burundi, there were some prisoners of conscience or opinion, and they had been prosecuted for inciting racial hatred. None of them had, however, been prosecuted for criticizing the Government, a party or the administration. Replying to other questions, the representative indicated that the law governing the bar, as well as the laws governing the Code of Penal Procedure and the Criminal Division of the Court of Appeal, provided that a person charged with an offence could be assisted by counsel of his own choosing or could request that counsel should be assigned to him. In 1977, the Mandi Commission had abolished land development contracts under which a person who had cultivated a landholding for several years could be evicted from it at any time by the landowner. The Judicial Control Commission, replaced in 1987 by the Office of the Inspector-General of Justice, dealt exclusively with monitoring the enforcement of judgements in land disputes.

67. The representative of the State party said that the rights covered by articles 18 and 19 of the Covenant had become a reality in Burundi, where many political parties, associations, newspapers, religions and sects had been authorized for some years.

68. As to articles 21, 22 and 25 of the Covenant, the representative of the State party stressed that public demonstrations were authorized under a decree-law adopted in 1992. For security reasons, demonstration organizers had to inform local authorities of the demonstration 48 hours in advance. The restrictions on the right to take part in the conduct of public affairs, to vote and to be elected, as referred to in articles 3 and 29 of the Constitution, were fully consistent with the Covenant. Article 57 of the Constitution prohibited political parties from identifying themselves in any way with an ethnic group, region, religion, sect or sex.

69. With regard to article 27 of the Covenant, the members of the Committee said that there were no ethnic groupings in the strict sense of the word in Burundi, since no population group possessed a territory, culture, language or religion of its own. However, the term "ethnic group" was used for lack of a better word to designate the Hutus, the Tutsis and the Twas, whereas the three groups made up a single population sharing the same culture. During the colonial era, the Hutus had represented 85 per cent of the population, the Tutsis 14 per cent and the Twas 1 per cent and no ethnic census had been organized since then.

Concluding observations by individual members

70. In concluding the consideration of the initial report of Burundi, members of the Committee welcomed the willingness of the State party's delegation to cooperate and enter into a constructive dialogue with the Committee on the application of the Covenant in Burundi. Members noted a number of positive developments that had recently taken place in Burundi, in particular, the opening towards pluralism, the promulgation of a new Constitution, the ratification of a number of international human rights instruments, the establishment of a centre for the promotion of human rights, and the agreement of the Government to the establishment of independent associations for the protection of human rights. Although there was still much to be done, members welcomed the implementation of a policy of voluntary repatriation, resettlement and social and occupational reintegration of refugees.

71. At the same time, members of the Committee expressed special concern over the cases of extrajudicial executions and of torture in connection with the upheavals that took place in 1988, 1991 and 1992. In that connection, they pointed out that no derogation from articles 6 and 7 of the Covenant were permitted under any circumstances. They also expressed concern over the unavailability of effective remedies to victims of human rights violations; the absence of legal provisions prohibiting illegal detention; the shortage of legal personnel and the financial constraints which hampered the administration of justice; the general inadequacy of the legal and other measures designed to promote and protect human rights; the various constitutional limitations on the effective enjoyment of human rights; and over problems relating to the effective implementation of articles 18, 19 and 27 of the Covenant.

72. The representative of the State party expressed her sincere thanks and appreciation for the dialogue which had been initiated and assured the Committee of her Government's desire to make improvements in future periodic reports.

73. In concluding the consideration of the report, the Chairman also thanked the representative for her cooperation and expressed the hope that the Committee's comments would be taken into account by the Government.

Comments of the Committee

74. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

75. The Committee welcomes the willingness of the Government of the State party to cooperate and to enter into a constructive dialogue with the Committee on the application of the Covenant in Burundi, as evidenced by the timely submission of its initial report, the sending of a high-level delegation to present the report and the submission of an additional document updating the information contained in the initial report. The Committee has, however, noted that the report did not conform to the Committee's general guidelines for the preparation of initial reports. The Committee commends Burundi for the core document (HRI/CORE/1/Add.16) submitted in accordance with the consolidated guidelines for the initial part of reports submitted under the various international human rights instruments (HRI/1991/1).

76. Since neither the initial report nor the additional document contained sufficient information on the actual application of the Covenant, in particular information on the factors and difficulties affecting the implementation of the provisions of the Covenant, it was difficult for the Committee to obtain a clear picture of the human rights situation in the country.

Positive aspects

77. The Committee has noted that recently a number of developments had taken place in Burundi that may have a positive effect on the human rights situation in the country, including the opening towards pluralism; the promulgation of a new constitution; the ratification of a number of international human rights instruments; the establishment of a centre for the promotion of human rights; and the agreement of the Government to the establishment of independent associations for the promotion and protection of human rights. Although there is still much to be done, the Committee welcomes the implementation of a policy of voluntary repatriation, resettlement, and social and occupational reintegration of Burundian refugees.

Factors and difficulties impeding the application of the Covenant

78. The Committee has noted that the upheavals that took place in the country in 1988, 1991 and 1992 had a negative impact on the human rights situation in Burundi as a whole, and seriously affected compliance with the provisions of the Covenant. Furthermore, constitutional provisions stipulating that the enjoyment of human rights had, in many instances, to be subordinated to the imperatives of public order, hindered the effective implementation of the Covenant. The Committee has also noted the absence of laws giving effect to constitutional provisions on human rights, the shortage of legal personnel and the large backlog of cases before the courts, all of which hinder the effective protection of human rights.

Principal subjects of concern

79. The Committee expresses concern about the general inadequacy of the legal and other measures designed to promote and protect human rights and, especially, about the various constitutional limitations on the effective enjoyment of human rights. The Committee is alarmed over the cases of extrajudicial executions and of torture documented in the reports prepared by the Special Rapporteurs of the Commission on Human Rights on those subjects (E/CN.4/1992/30 and E/CN.4/1992/17)

and also as reported by various non-governmental organizations. In that connection, the Committee observes that no derogations from articles 6 and 7 of the Covenant are permitted under any circumstances. The Committee has also noted that effective remedies to victims of human rights violations, as envisaged in article 2, paragraph 3, of the Covenant, are not available. In addition, the absence of legal provisions prohibiting illegal detention and of a habeas corpus procedure seriously undermine the rights to liberty and security of person as set forth in article 9 of the Covenant. The non-conformity of legislation and actual practice with articles 18 and 19 of the Covenant was also of special concern.

Suggestions and recommendations

80. The Committee recommends that a determined effort be made to bring national laws and practice more closely into conformity with the provisions of the Covenant, that the use of excessive force by law enforcement officers should be effectively prevented and that, in conformity with articles 2, 26 and 27 of the Covenant, the rights of persons belonging to minorities living in the country should be given full protection. It is also recommended that Burundi's second periodic report should be prepared in conformity with the Committee's general guidelines and provide comprehensive information on measures undertaken, both in law and in practice, to give effect to the provisions of the Covenant.

Senegal

81. The Committee considered the third periodic report of Senegal (CCPR/C/64/Add.5) at its 1179th to 1181st meetings, held on 20 and 21 October 1992 (CCPR/C/SR.1179-1181). (For the composition of the delegation, see annex XI.)

82. The report was introduced by the representative of the State party, who stated that the United Nations human rights instruments had served as a major source of inspiration to Senegal on its accession to international sovereignty, when it had resolved to make the primacy of the law the foundation of the State. As a result, human rights were not merely reflected in the preamble to the Constitution but were defined systematically in articles 6 to 20 and could be evoked and defended before all appropriate bodies. In 1970, the Senegalese Human Rights Committee was established to plan and coordinate government policy and disseminate information on human rights. The Committee had been reorganized, most recently in 1990, in order to adapt it to the national and international situation concerning the promotion and protection of human rights. Additionally, the public authorities had encouraged the establishment of competent non-governmental organizations. About 10 such organizations had been formed and they enjoyed the support of the people and Government.

83. At the national level, fundamental human rights were observed both in legislative acts and in actual practice. This included the whole spectrum of civil and political rights as well as economic, social and cultural rights. At the international level the primacy of the law, particularly in the human rights field, was viewed by Senegal as the basis for its foreign policy. Senegal had acceded to 26 international human rights instruments which, under article 79 of the Constitution, had primacy over national laws and which had been integrated into legislation and could be invoked before all Senegalese courts.

Constitutional and legal framework within which the Covenant is implemented, self-determination, non-discrimination, equality of the sexes, protection of the family and rights of persons belonging to minorities

84. With regard to these issues, the Committee wished to know whether the Optional Protocol had been published in the *Journal Officiel*; whether an individual could invoke the provisions of the Covenant before Senegalese authorities, especially the courts; what the functions and activities were of the Senegalese Human Rights Committee; what measures had been taken to publicize the Covenant and the Optional Protocol and create public awareness about the rights contained therein; whether the Constitution had been amended to include all the grounds of discrimination covered in the Covenant; and whether specific legislative, administrative and judicial arrangements had been made by the Government of Senegal to prevent racial discrimination.

85. The Committee also wished to have further information on the compatibility with the Covenant of articles 152 to 154 of the Family Code, which grant special rights to men; on the powers vested in the President of the Republic under article 47 of the Constitution; on the definition of the term "minorities", in so far as such groups are recognized by the Government; and on how the provisions on non-discrimination contained in articles 2, 26 and 27 were being applied, particularly in the southern part of the country. They also wished to know whether a commission had been set up to study family law matters and what steps had been taken to ensure a more equitable sharing of the rights and responsibilities of spouses.

86. In his reply to the questions raised by members of the Committee, the representative of the State party said that the Optional Protocol had been published in the *Journal Officiel* in 1978, following its ratification in 1977 by Act 77-73. Upon ratification, the Covenant became part of domestic law and its provisions could be invoked in any trial in Senegal. Both of those instruments had been focused upon by the Senegal Human Rights Committee, which had a weekly radio programme on human rights. Non-governmental human rights organizations in Senegal also helped to disseminate information in lectures and discussions.

87. Article 154 of the Family Code had been abrogated by Act 89-01 of January 1989. Article 152 of the Code provided that the husband should determine the residence of the household. However, if the wife believed that her husband's choice endangered the health or morals of the family, she could apply to a departmental judge to accord her separate residence. That article could not, therefore, be considered as discriminatory. Recent amendments had been made in the Family Code and in the relevant sections of the Penal Code providing for equitable treatment in cases of desertion. The practice of polygamy was recognized in the Family Code since it was a social custom in the country and it was considered Utopian to attempt to abolish the practice. The Family Code limits the number of wives to three and obliges the husband to treat his wives equally. A woman can complain to a judge if her husband violates his obligations.

88. Article 47 of the Constitution, which vested special powers in the President of the Republic when the nation faced certain serious and imminent dangers, had never been applied nor had the measures that the President could take ever been defined. Article 58 of the Constitution, however, provided adequate means to regulate states of emergency. States of emergency had been declared in 1988 and 1989 for unrelated reasons and merely imposed a curfew. During those emergencies, people had been free to move about during the daytime. An advisory control commission, presided over by a judge, had been established under Law No. 69-29 of 29 April 1969 for the purpose of monitoring states of

emergency and to ensure, in particular, that any measures undertaken did not violate human rights.

89. Concerning ethnic, religious or linguistic minorities, there was sufficient interaction and tolerance in Senegal that there were no problems in that regard. Legislation took into consideration the social situation of ethnic and linguistic minorities and there was perfect harmony between the Muslim majority and the Catholic minority. Measures to prevent discrimination were taken in schools where children learned tolerance, a message that was also carried on the radio and in other media. With respect to the situation in the southern part of the country, Casamance, an accord had been signed by the State of Guinea-Bissau, the State of Senegal and the Movement of Democratic Forces of Casamance (MFDC). The accord had been preceded by the amnesty laws of 1988 and 1991 permitting the MFDC to withdraw its troops. Since the serious events of September 1992, dialogue had been restored and a regional commission had been monitoring the application of the accord. The Government of Senegal was currently trying to seek a juridical solution to the problem of Casamance and hoped that the international community would assist it in this respect.

Right to life, treatment of prisoners and other detainees, liberty and security of the person

90. With reference to these issues, the Committee wished to know, in view of the fact that only two death sentences have been pronounced in the last 30 years, whether any consideration had been given to the abolition of the death penalty in Senegal; when, pursuant to article 52 of the Penal Code, was a person considered a minor; whether any investigations had been carried out with regard to accusations made by humanitarian organizations concerning extrajudicial executions and, if so, with what results; what procedures would be followed in the event of violations of rules and regulations governing the use of firearms by the police and armed forces; whether there had been any further developments since the submission of the report relating to the investigation of cases of torture or ill-treatment of persons deprived of their liberty; what measures had been taken to punish those found guilty, to prevent the recurrence of such acts and to disseminate information on the rights recognized in the Covenant among law enforcement officers; and whether a lawyer could have full access to his client immediately after arrest.

91. Members of the Committee also wished to know whether capital punishment was applicable under the code of military justice and whether it could be invoked during a state of emergency; how many people had been compensated for illegal or arbitrary detention; what measures the Government had taken to investigate alleged cases of extrajudicial executions; what measures the Government had taken to prevent the occurrence of such executions; and whether any agents of the Government had been implicated in such executions.

92. In his reply, the representative of the State party said that the Government viewed questions concerning torture or extrajudicial executions with great seriousness. Amnesty laws had been promulgated to restore the peace rather than to assure impunity to the guilty parties. The Government had opened investigations when abuses had been reported by non-governmental organizations and had developed a fruitful cooperation with such organizations. Additionally, article 66 of the Penal Code provided for the opening of an investigation when a body was discovered and the cause of death was either unknown or suspect. Such a case would be brought to the attention of the Public Prosecutor immediately so that an investigation could be undertaken without delay.

93. To protect the rights of the accused, Senegal had opted for an alternative to habeas corpus, in its Code of Criminal Procedure. Under article 55 of the

Code, the criminal investigation officer can normally detain suspects only for 24 hours before lodging charges. Only in cases where there are strong reasons implicating the detainee, can detention be extended to 48 hours, with the accord of the Public Prosecutor or his representative. However, at that point the detainee had to be informed of the reasons for his detention. Special custodial arrangements were made for minors between the age of 13, which was the age of criminal liability, and the age of 18, which was the age of majority.

Right to a fair trial

94. In regard to that issue, the Committee wished to have further information on the jurisdiction and activities of the State Security Court, including examples of cases that had been assigned to it, and on its relationship with ordinary courts. In particular, members of the Committee wanted to know whether it was possible to appeal against decisions of that court before the ordinary courts. Also, in the light of paragraph 58 of the report, members of the Committee wished to know whether it was possible to sentence a person *in absentia* and, if so, under what circumstances.

95. In his reply, the representative of the State party stated that the State Security Court, which was abolished by Law No. 92/31 of 4 June 1992, had been the subject of much criticism at both the national and international levels. A number of practices associated with it, such as the absence of the right of appeal to its decisions, had clearly been in conflict with democratic processes in Senegal. A number of mechanisms were employed to ensure that accused persons were present in court and able to respond to charges. In cases where the accused was not in custody but had personally received a summons, failure to appear in court precluded the possibility of challenging the court. While in such cases both the judgement and the sentence were rendered in the person's absence, the right of appeal was not compromised. In situations where a summons had not been delivered by hand to the accused, the court could either decide to renew the effort to make contact with the accused, or choose to declare the absence as "simple default", which provided for the possibility of the sentenced person opposing the verdict and the sentence. In such a case, the matter would be reconsidered by the same court.

Freedom of movement and expulsion of aliens, right to privacy, freedom of opinion and expression, prohibition of propaganda for war and the incitement to national, racial or religious hatred and freedom of association and assembly

96. With respect to these issues, the Committee wished to know how the expression of different points of view was ensured in the State broadcasting corporation; whether the Government had recently applied penalties in cases where newspaper articles had been considered to jeopardize public security or morals; how the compatibility of Act 78-02 of 29 January 1978 with article 21 of the Covenant was ensured; and how the obligations under article 20 of the Covenant were implemented in Senegalese law and practice. Members of the Committee also wished to have further information on actual cases in which naturalized citizens had been deprived of their status as Senegalese; and on legislation relating to freedom of movement, especially those relating to restrictions thereon.

97. Additionally, members of the Committee wished to know whether the Government had plans to privatize the mass media in Senegal; which authorities were able to authorize the holding of private meetings and whether their decisions could be appealed; whether the Senegalese Human Rights Committee provided any services for the active defence of human rights; and whether the penal provisions restricting freedom of the press had been reviewed in the light of the democratic progress that had been achieved. Members of the Committee

also requested further information on possible restrictions on the right of privacy and on the number and frequency of prosecutions against journalists.

98. Replying to the questions, the representative of the State party said that cases in which naturalized citizens were deprived of their status as Senegalese were set forth in article 16 of Act 61-10 of 7 March 1961, as amended by Act 89-42. Under that Act, naturalized citizens could not hold office or practice a profession for which Senegalese nationality was required. These restrictions expired after a specified number of years following naturalization and could be lifted by decree if the naturalized citizen had rendered exceptional services to Senegal. Senegalese nationals wishing to travel outside Africa were required to hold a return ticket, prove that they had the means to live in the country of destination and to have an entry visa for that country. The State broadcasting corporation had recently been reorganized and a body had been created to ensure that pluralism was respected and different points of view were expressed. Private meetings could be held freely and the authorities merely had to be informed about them. The authorities had to be informed in advance of public meetings or requested to authorize them. Such authorizations were usually never refused but refusals were, in any case, subject to appeal to the administrative courts. Following the reform of the electoral law, the requirement to request authorization to hold meetings during an election campaign had been abolished. Propaganda for war and advocacy of hatred were prohibited by law and severe penalties were provided for those guilty of incitement to racial hatred or hostility. Tolerance and fraternity were taught at all educational levels and were also stressed in religious instruction.

99. Concerning freedom of the press, criminal provisions had been introduced as a result of slander and defamatory statements by journalists some years earlier, which were considered to have had a demoralizing effect on the army. However, no prosecutions had been brought against journalists in the past two or three years. The situation in this respect was being reviewed and it was expected that the offences in question would be reduced to ordinary law offences, which would allow anyone who had been slandered to seek compensation.

100. Some private bodies were already present in radio and television in Senegal. Foreign radio and television broadcasting had also begun to operate in Dakar and privatization of the media was expected to proceed further in 1993. Exceptions to the right to privacy could be made during states of emergency but, in practice, there had been no censorship of correspondence or monitoring of telephone communications.

101. The Senegalese Human Rights Committee was chaired by a Supreme Court judge and was made up of one representative of the Office of the President, one representative of each of the main ministries and representatives of workers' organizations, women's and youth movements, non-governmental organizations and others. The Committee published reports on its activities, which included drawing the attention of the competent authorities to human rights violations.

Concluding observations by individual members

102. The Committee expressed its appreciation to the State party for the punctual submission of its reports since its accession to the Covenant and its spirit of cooperation with the Committee. It was noted that the third periodic report did not deal fully enough with the difficulties the country faces, particularly in the south, and how those difficulties affected the implementation of the Covenant. However, the authorities in Senegal had taken the Committee's comments into account in the process of reorienting national legislation and providing the legal guarantees necessary for the enjoyment of human rights. The abolition of the Security Court and the reorganization of the

supreme judicial bodies were welcomed, as were the delegation's candid response on shortcomings with regard to notification of derogations under article 4 of the Covenant. However, it was noted that a declaration should have been made, in accordance with article 4 of the Covenant, regarding the limitations on freedom of movement imposed under the recently declared state of emergency.

103. Some areas of concern remained, particularly over the lack of investigation into allegations of extrajudicial executions and torture by members of the army or police. Particular concern was expressed over the danger that the amnesty laws might be used to grant impunity to officials responsible for violations, who had to be brought to justice.

104. Members of the Committee emphasized that the right of access to legal counsel began from the moment an individual was deprived of his freedom. Concern was expressed over the fact that detainees could be held without charge for up to eight days, even though article 55 of the Penal Code offered some protection in such situations. Members of the Committee also expressed their concern over the possibility that the amended Press and Journalism Act of April 1979 still inhibited freedom of expression and infringed on the right of access to information, noting that all such restrictions must accord with the criteria set out in article 19, paragraph 3, of the Covenant. Additionally, concern was expressed over the numerous restrictions on the mass media and the holding of meetings.

105. In regard to non-discrimination, members of the Committee expressed their concern over the Family Code and noted that its provisions were not compatible with the Covenant, particularly in regard to establishing the husband as the sole head of the household. In this regard, members of the Committee also expressed their concern over the continued practice of polygamy in Senegal since, in actual practice, it was impossible for a man to treat his wives equally. Members of the Committee also expressed concern over the reluctance of the Government to recognize the existence of minorities and emphasized that article 27 of the Covenant conferred benefits on members of such groups.

106. The representative of the State party thanked the members of the Committee for their remarks on his Government's implementation of the Covenant. He had taken careful note of the concerns that had been voiced and would faithfully transmit them to his Government.

107. The Chairman of the Committee observed that the delegation had furnished rich material for the Committee's consideration of the report of Senegal. He was certain that the delegation would fully inform the Government of the discussion and ensure that all comments made by Committee members were taken into account. It was obvious that that had been done after the consideration of the second periodic report, and Senegalese legislation had improved accordingly.

Comments of the Committee

108. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

109. The Committee expresses its appreciation for the State party's third periodic report which had been prepared in accordance with the Committee's general guidelines and showed progress in implementing the provisions of the Covenant. At the same time, the Committee finds that the report focuses on laws and administrative regulations rather than on the actual implementation of the provisions of the Covenant and contains little information on factors and difficulties encountered in their application. In its comprehensive replies to the questions raised by Committee members, however, the delegation has endeavoured to complement the written report. The information, both written and oral, provided by the State party has enabled the Committee to make a realistic assessment of the human rights situation in Senegal.

Positive aspects

110. The Committee takes note with satisfaction of the progress that has been achieved in the implementation of provisions of the Covenant in Senegal. Among the positive developments aimed at strengthening the protection of human rights that has occurred since the consideration of the second periodic report in 1987 the Committee notes, inter alia, the adoption of new legislation or legislative amendments more in accordance with the Covenant such as the reorganization of the judicial branch, particularly the establishment of the State Council, the Supreme Court and the Constitutional Council, the abolition of the State Security Court, and the creation of the post of Mediator. The Committee also notes the adoption of a new Electoral Code; the application, for the first time, of certain provisions contained in the Covenant by the national courts; and the careful consideration that had been given by the Government of the State party to the comments and recommendations formulated by the Committee during consideration of the second periodic report.

Factors and difficulties impeding the application of the Covenant

111. The Committee notes that during the period under review, a state of emergency was proclaimed that affected the southern part of Senegal (région de Casamance), and that several of the rights covered by the Covenant were derogated. In addition, the persistence of certain customs and the existence of outmoded legislation hinder Senegal's full compliance with its obligations under the Covenant.

Principal subjects of concern

112. The Committee does not agree with the Government's contention that the provisions of the Covenant must be interpreted and applied against the background of the conditions prevailing in the country. Rather, it believes that all efforts should be made to bring those conditions into conformity with internationally agreed human rights standards. It finds that certain provisions of penal legislation are not in conformity with article 6 of the Covenant, especially in respect of the application of the death penalty to minors, or with article 9 of the Covenant, particularly in so far as they allow detainees to be kept incommunicado during the first eight days following arrest and deprived of access to a lawyer for the period of arrest. The passiveness of the Government in conducting timely investigations of reported cases of ill-treatment of detainees, torture and extrajudicial executions is not consistent with the provision of articles 7 and 9 of the Covenant. To achieve full compliance with article 4 of the Covenant, greater efforts are also needed to ensure the proper protection of human rights under a state of emergency. The Committee considers that amnesty should not be used as a means to ensure the impunity of State officials responsible for violations of human rights and that all such

violations, especially torture, extrajudicial executions and ill-treatment of detainees should be investigated and those responsible for them tried and punished. Furthermore, the Committee is concerned about remaining areas of discrimination against women.

Suggestions and recommendations

113. The Committee recommends that laws relating to states of emergency, the protection of the right to life and the death penalty, forced labour, the treatment of detainees and their access to a lawyer and freedom of expression - particularly restrictions imposed on the exercise by journalists of this right - be brought into conformity with articles 4, 6, 8 and 19 of the Covenant, respectively. The proclamation of any state of emergency must be notified to the Secretary-General of the United Nations in a timely manner. Efforts should also be made to remove social barriers in order to ensure the real equality of men and women. The Committee also recommends that training courses should be organized for members of the police, the army and the security forces as well as for other law enforcement officials so as to better acquaint them with the basic principles and norms of human rights and laws aimed at their protection.

114. The Committee has received a communication from the State party dated 17 May 1993, referring to the comments of the Committee (see CCPR/C/90).

Luxembourg

115. The Committee considered the second periodic report of Luxembourg (CCPR/C/57/Add.4) and the core document (HRI/CORE/1/Add.10) at its 1187th and 1188th meetings, held on 26 October 1992 (CCPR/C/SR.1187 and 1188). (For the composition of the delegation, see annex XI.)

116. The report was introduced by the representative of the State party, who pointed out that under article 111 of the Constitution of Luxembourg all foreigners in the territory enjoyed the protection of their fundamental rights subject only to exceptions established by law. Extensive jurisprudence on the matter reflected the fact that foreigners enjoyed the same political rights as citizens of Luxembourg.

Constitutional and legal framework within which the Covenant is implemented and non-discrimination and equality of the sexes

117. With respect to those issues, the Committee wished to know whether there have been any cases where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions and, if so, what the relevant details were; what the status was of the special commissioner appointed to enforce decisions taken by the litigations committee of the Council of State and what powers were vested in him; whether the term "foreigners" referred only to immigrants or also to non-citizens in general, including asylum seekers or even tourists; whether appeals could be made against decisions of the military courts and, if so, to which body; whether decisions taken by the Committee under the Optional Protocol were known in Luxembourg, particularly among members of the legal profession, the judiciary and government officials; and, with reference to paragraph 35 of the report, whether religious ministers remunerated by the State belonged to a particular religion.

118. Members of the Committee also wished to have further details on the work being accomplished by the special consultative commissions of the various communes, referred to in paragraph 48 of the report, including information on the support they received from communal authorities; on the application of recent laws designed to protect small and lesser-known minorities; on

restrictions to the right to take part in elections; and on offences that could result in a person being deprived of the right to vote.

119. In his reply, the representative of the State party said that there had been a number of cases where the provisions of the Covenant had been invoked in a court of law. The judicial authorities in all such cases had held that the provisions of international instruments took precedence even over the provisions of the Constitution and also, therefore, over existing laws and regulations. Where domestic legislation was not in line with international instruments, the courts had the authority to declare the provision in question illegal in relation to a specific case brought by a given claimant. The legislation itself was not declared illegal, however. Currently there was no provision for monitoring legislation to see if it was in accord with the Constitution and international instruments, which admittedly represented a serious gap in the country's legal system.

120. Unfortunately, Luxembourg's citizens were not well aware of the rights contained in the Covenant and even lawyers who could have invoked human rights instruments in legal proceedings had failed to do so because of their unfamiliarity with the relevant conventions. Although the competent ministries had considered the reports of the Committee, only limited publicity was given to such reports. The representative indicated that he would make the necessary recommendations to the authorities on these points.

121. A variety of measures had been taken in order to improve the participation of foreigners in communal life. Foreigners would be accorded the right to vote in communal elections, as a result of the Treaty on European Union, signed in Maastricht on 7 February 1992, and would also be able to vote in professional organizations and chambers of commerce, pursuant to a recent decision of the Council of State. While there were no problems concerning housing, health and social services, there were difficulties in the field of education, where efforts were being made to better integrate foreign children into the school system.

122. There were presently three officially recognized religions in Luxembourg: Catholicism, Protestantism and Judaism. The status of "official religion" entitled ministers of such religions to be remunerated as State employees on the basis of conventions signed with the State. To be recognized as an official religion, other religions would have to take steps to conclude similar conventions with the State.

Treatment of prisoners and other detainees and right to a fair trial

123. With reference to those issues, the Committee wished to have further information on the functions and activities of liaison officers who supervised places of detention, as referred to in paragraph 10 of the report; on guarantees provided under the Acts of 16 June and 7 July 1989 to safeguard the interests of persons under arrest; on the implementation in practice of article 9, paragraph 3, of the Covenant; on the activities of the official appointed in mental health establishments to inform and advise mentally-ill patients of their rights; and on the procedure and criteria for selecting magistrates and appellate court judges.

124. With respect to regulations pertaining to the application of isolation to detainees, members of the Committee wished to know what offences gave rise to isolation as a punishment; who decided when it would be applied; how were prisoners defined as "dangerous" and for how long could they be held in isolation; whether a decision to place a detainee in isolation could be appealed; why isolation also included a prohibition against reading literature;

how many people had been placed in isolation in 1992; and whether it was regarded as satisfactory that prisoners in isolation were allowed only one hour's exercise per day out of their cell.

125. Members of the Committee also wished to know whether there were any maximum limits on the length of pre-trial detention; whether the draft bill on the protection of youth had been adopted by the Chamber of Deputies; whether consideration was being given to changing the interpretative declaration made by Luxembourg in respect of article 10, paragraph (2) (b), of the Covenant; whether the prison population included drug abusers and how necessary care was administered to such persons; and whether the Constitution had been modified to reflect the decision, adopted pursuant to the law of 20 June 1979, to abolish the death penalty.

126. In his reply, the representative of the State party said that the public prosecutor and a liaison officer, who was always a judge of the ordinary courts, monitored compliance with the internal regulations of penal institutions. Complaints from prisoners were always heard by the public prosecutor. Existing procedures concerning pre-trial detention provided that a detainee's immediate release had to be ordered if no court decision had been reached within one month of the detainee's initial interrogation. Victims of unlawful arrest or detention had a right to compensation, which was ultimately decided upon by the Minister of Justice.

127. Resort to the isolation of prisoners was very exceptional, and was a disciplinary rather than a punitive measure. The decision to impose isolation could be made only by the public prosecutor, taking into account the advice of a doctor. The detainee's lawyer could appeal the decision, particularly on the grounds that the imposition of isolation would endanger the physical and psychological well-being of the detainee. Any disciplinary measure of such a serious nature could be appealed to the judge responsible for monitoring prison conditions. Detainees were always able to communicate with their families, lawyers or with the public prosecutor, except where such communication was expressly forbidden by the examining judge. Such decisions were made strictly in accordance with the penal code. The sentence of hard labour, which was still provided for under the penal code, was never applied in practice.

128. The Law of 12 November 1971 relating to the protection of minors had been recently replaced by a new law, which would be provided to members of the Committee. Minors in detention were separated from contact with adult prisoners except in workshops or similar activities in which the minors had chosen to participate. Steps for the social rehabilitation of delinquent minors had been elaborated by the Minister of Social Assistance in consultation with experts and specialists in psychology. In general, good results had been obtained by the system, although it was always difficult to eliminate the problem of repeat offenders. Prisoners who were drug addicts could obtain specialized treatment for their problem on request. Drug addicts could also be placed in isolation from other prisoners for their own protection. The death penalty had been abolished from the Penal Code, although the reference to it in the Constitution had been maintained. In practice this means that it cannot be applied by the courts.

Freedom of movement and expulsion of aliens and freedom of expression and assembly

129. Regarding those issues, the Committee wished to know how many aliens have been refused permission to settle in Luxembourg or had had their identity cards withdrawn or their renewal refused because they failed to fulfil legal obligations towards their families; how compatibility with article 21 of the

Covenant by communal authorities who were authorized to issue regulations relating to the exercise of the right to freedom of assembly was ensured; and what administrative arrangements had been established for the detention of aliens awaiting expulsion.

130. In his response, the representative stated that no alien had been refused permission to settle in Luxembourg or had had his or her identity card withdrawn or its renewal refused because of the failure to fulfil legal obligations towards the family. The right of peaceful assembly was guaranteed under article 25 of the Constitution. Open-air public assemblies, whether political, religious or otherwise, were subject to laws and regulations of the police and communal authorities. Relevant communal regulations were subject to the approval of the Minister of the Interior and persons or organizations affected by such Ministerial decisions could contest the legality of the decision before an administrative judge. Police regulations applicable to such matters, had been established in conformity with the limitations foreseen in article 21 of the Covenant.

Protection of the family, right to vote and rights of persons belonging to minorities

131. Concerning those issues, the Committee wished to have further information on existing legislative or administrative arrangements for protecting the interests of children in cases of family separation, other than those described in paragraph 37 of the report, and on the ways and means by which the Immigration Council integrated aliens into society. Regarding the deprivation of voting rights as part of sentencing in some cases, members of the Committee wanted to know how long the deprivation of the right to vote lasted and whether the sentence was applied routinely for certain types of crimes or whether it was employed only as an exceptional measure.

132. In his reply, the representative of the State party pointed out that among Luxembourg's 378,000 inhabitants more than 80 nationalities were represented, a situation which made it difficult to speak of specific minorities. Immigrants did not constitute ethnic minorities under Luxembourg law and were extended the same rights as citizens. Foreigners, including nationals of other European Community States, were part of the national community regardless of their race, nationality, colour or religion. As such, they were extended the same rights as citizens in matters pertaining to social security, sickness, pensions and retirement, with the exception of the right to vote. The exclusion of convicted criminals from voting was regulated under article 53 of the Constitution, which provided that persons convicted and sentenced for a variety of crimes could lose their right to vote. In cases of serious crimes, such as murder or rape, the deprivation could be mandatory whereas for minor crimes the right to vote could be temporarily suspended at the discretion of the sentencing judge. In all cases, voting rights could be restored by decision of the Grand Duke.

Concluding observations by individual members

133. Members of the Committee thanked the delegation of Luxembourg for its frankness and cooperation in helping the Committee to better understand Luxembourg's legal system. It was noted that while the general situation with respect to the application of the Covenant was satisfactory, certain problems had persisted. In this regard, members considered that the practice of including a suspension of voting rights as part of sentencing raised a number of problems under article 21 of the Covenant. Members also expressed concern over practices in Luxembourg regarding the application of isolation to detainees including, in particular, the length of isolation, the prohibition of reading materials to isolated detainees and the fact that they were allowed only one

hour out of their cell each day for exercise. It was also noted that the use of preventive detention should not become routine nor should it lead to excessive periods of detention or infringe upon the presumption of innocence. Members were satisfied that the death penalty had been abolished in practice but none the less expressed the hope that it would be abolished at the level of the Constitution in the near future.

134. Concern was also expressed over the position of religious sects which had not entered into a covenant with the State and which, therefore, were at a disadvantage relative to sects that had done so and were supported by the State. Additionally, members noted that, under article 27 of the Covenant, ethnic, religious and linguistic minorities had a right to their own cultural life and that the exercise of that right needed to be guaranteed and monitored by the State. It was also noted that, in general, the provisions of the Covenant were not adequately publicized in Luxembourg. In this regard, it was suggested that the Government facilitate a greater awareness among the general public and, in particular, among members of the judiciary and the legal profession.

135. In concluding the consideration of the second periodic report of Luxembourg, the Chairman expressed his appreciation for the delegation's competence and candour in responding to the questions and concerns raised by the Committee, as well as his confidence that those concerns would be taken into account by the Government. He observed that in as much as judges were able to overturn national laws they considered incompatible with treaty law, it would be desirable if members of the judiciary could be made more familiar with the Covenant and the way its provisions were interpreted by the Committee, particularly through its general comments and its decisions under the Optional Protocol.

Comments of the Committee

136. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

137. The Committee commends the State party on its report which contains clear and basic information on laws relating to the implementation of the provisions of the Covenant. The Committee, however, regrets that the report lacks information concerning the actual situation on the ground, including factors and difficulties which may affect the implementation of the Covenant.

138. The Committee also commends Luxembourg for the core document (HRI/CORE/1/Add.10) submitted in accordance with the consolidated guidelines for the initial part of reports submitted under the various international human rights instruments (HRI/1991/1).

139. The Committee expresses its appreciation for the high-level delegation which represented the State party during the consideration of its report. The competence of that delegation and the cooperation it demonstrated in responding to requests for further information facilitated a constructive dialogue between the Committee and the State party.

Positive aspects

140. The Committee welcomes the position accorded to the Covenant within the hierarchy of the State party's national law. The Committee has noted the delegation's statement that the provisions of the Covenant may be directly invoked in the courts and that, where there is a conflict between those

provisions and national law, the Covenant is accorded supremacy. The Committee also welcomes the initiative taken to ensure the abolition of the death penalty.

Principal subjects of concern

141. The Committee expresses its concern over the insufficient publicity given to the Covenant among persons in those professions most concerned with its application and among the general public, who thus may not be adequately informed of the protection afforded by the Covenant and of the possibility of submitting individual communications under the Optional Protocol.

142. With respect to the treatment of prisoners, the Committee is concerned over present practices pertaining to solitary confinement which are incompatible with article 10 of the Covenant. Additionally there is no remedy available with regard to the decision of the Prosecutor General to apply solitary confinement. Another area of concern is the application of pre-trial detention which may lead to excessive periods of detention and which may infringe upon the presumption of innocence.

143. Other areas of concern include article 18 of the Constitution which still presupposes the existence of the death penalty; the lack of a remedy to decisions of the Prosecutor General regarding internment of the mentally ill; the deprivation of the right to vote as a further sanction in criminal cases; and continuing provision in the law for hard or forced labour, which has not yet been abolished. The Committee also notes that care must be taken with present practices for financing religious minorities to ensure that they remain in conformity with articles 2, paragraph 1, and 27 of the Covenant.

Suggestions and recommendations

144. The Committee recommends that the State party undertake steps to disseminate information about the Covenant and the Optional Protocol; restrict the use of solitary confinement to short, temporary periods and only where necessary as part of disciplinary measures; provide an effective remedy for those who have been subjected to solitary confinement in a prison or to internment in a facility for the mentally ill; and review legislation on criminal procedure so that it is fully in line with provisions concerning pre-trial detention under article 9 and the presumption of innocence under article 14 of the Covenant.

145. The Committee also suggests that the State party consider abolishing the deprivation of the right to vote as part of legitimate punishment; consider a new approach to guaranteeing the rights of minorities, particularly in regard to the system of conventions between the State and various religious communities; and consider the need for a constitutional remedy to further clarify situations where conflicts may seem to arise between the provisions of the Covenant and the Constitution. The Committee also invites the State party to review the reservations and interpretative declarations it made upon ratification with a view to withdrawing them as far as possible.

United Republic of Tanzania

146. The Committee considered the second periodic report of the United Republic of Tanzania (CCPR/C/42/Add.12) at its 1189th to 1191st meetings, held on 27 and 28 October 1992 (CCPR/C/SR.1189-1191). (For the composition of the delegation, see annex XI.)

147. The report was introduced by the representative of the State party, who stated that the United Republic of Tanzania had "democratically chosen a single

party" during its 30 years of independence. However, in view of the winds of democratization sweeping across the world, and in Africa in particular, the United Republic of Tanzania had established a Special Commission in 1991 to determine whether the single-party system should be maintained or a multi-party system adopted. Despite the fact that 80 per cent of the population interviewed had been in favour of continuing the single-party system, the Government decided to opt for a multi-party system. As a result, the Constitution had been amended in April 1992 and political parties had already obtained their provisional registration. A new Political Parties Act had been introduced and the parties had been given three years to prepare for the first multi-party presidential election in 1995.

Constitutional and legal framework, self-determination, state of emergency and right to participate in the conduct of public affairs

148. With regard to those issues, the Committee wished to know whether the provisions of the Covenant, in particular those not reflected in the Bill of Rights, could be directly invoked before the courts under the amended Constitution and, if so, had there been any cases where this has been done; whether domestic legislation had been reviewed for its compatibility with the amended Constitution; whether any laws, decrees or administrative acts had been challenged as unconstitutional on the ground that they infringed a right guaranteed under the amended Constitution; how court practice had been brought into line pursuant to the Criminal Procedure Act as amended, with the standards set out in the Covenant; whether the functions of the Permanent Commission of Enquiry had changed as a result of the amendments to the Constitution and the Criminal Procedure Act; how the United Republic of Tanzania guaranteed the application of articles 1 and 25 of the Covenant within its political system; and how the rights to life and to the inviolability of personal freedom in a state of emergency were ensured. Further information was requested on the activities of the Permanent Commission of Enquiry as to its effectiveness and the extent of public knowledge of its existence and role.

149. Members of the Committee also wished to know what was the relationship between the Constitution of the Chama Cha Mapinduzi Party, the Constitution of the United Republic of Tanzania and the Constitution of Zanzibar and which of them prevailed in case of conflict; when and on what grounds was it possible to derogate from the provisions of sections 14 and 15 of the Constitution in respect of individuals believed to be conducting themselves in a manner that endangered or compromised national security (CCPR/C/42/Add.12, para. 65); how the functions of the ruling party in respect to the protection of human rights would be transferred to the Government under the new multi-party system; how "the public interest" was defined in relation to its mention in section 30 (2) of the Constitution and whether that section would be amended in view of the new multi-party system; whether there were any plans to hold parliamentary elections under the new system; whether prior permission for campaign meetings to be held within the framework of the planned multi-party elections had to be obtained from the District Commissioner; whether there was any political persecution such as the holding of prisoners of conscience, particularly in Zanzibar; and who was responsible for determining whether or not a news item was false thereby prohibiting its publication under the Newspaper Act and, in the event, whether there were any recourse procedures.

150. Further information was requested concerning the enjoyment of the rights set forth in article 25 of the Covenant; on amendments to section 38 (2) of the Constitution; on restrictions on freedom of movement and residence, as referred to in paragraph 20 of the report; on the role of the Special Constitutional Court with respect to implementation or interpretation of the Constitution between the Government of the United Republic of Tanzania and the Revolutionary

Government of Zanzibar; on the strength and political characteristics of the newly registered political parties, including their relationship with the ruling party; on the application of article 25 of the Covenant and the apparent incompatibility of the one-party system with that article; on the controls exercised in the party registration process; and on the scope and application of the policy of Ujamaa.

151. Replying to the questions, the representative of the State party declared that nearly all of the provisions of human rights instruments were reflected in the Constitution and had not been affected by the recent amendments. Lawyers and judges invoked those rights in connection with various cases before the courts. However, as the amended Constitution had entered into force only in July 1992, it was too soon to determine whether some of the provisions of the Covenant had been directly invoked before the courts under the amended Constitution. In regard to the process of legislative review, the task had only just begun. With respect to the Permanent Commission of Enquiry, its activities had come to a halt with the amendment of the Constitution. In a multi-party system, the functions of the Commission would have to change or it would have to be abolished altogether. The public had been informed of the role of the Commission through circulars and through the press and radio broadcasts. The procedures for the declaration of a state of emergency had been changed to reflect the new multi-party system. The representative added that no state of emergency had been declared since independence.

152. With regard to equality between men and women, customary law in the United Republic of Tanzania tended to favour men. As a result, women did not have the right to own goods or to inherit them. However, a number of women's organizations had pressured for change and the Commission for the Reform of the Law was expected to modify some of the legislation in question. Until such time, women would continue to be at a disadvantage in the courts. With respect to court assessors, their function was only to advise the court with regard to customary law. The court was not obliged to follow that advice.

153. A number of questions had been raised concerning the new Constitution and its effect on Zanzibar. The change to a multi-party system and all other changes brought about by the new Constitution applied to Zanzibar as well as the mainland. Under the new provisions for the registration of political parties, prospective political parties had to show that their membership was voluntary and open to all citizens of the United Republic of Tanzania without discrimination. In addition, the party could not be based upon religious belief or tribal or regional identification nor could it espouse the dissolution of the Union. It had to have at least 200 members who were eligible to vote in legislative elections. Its membership had to come from at least 10 regions of the United Republic of Tanzania and had to include members from the islands of Zanzibar and Pemba. During the present transitional period to a multi-party system, the statutes of the Chama Cha Mapinduzi Party, which had been heretofore the only party recognized under the Constitution, had been modified. Whereas before the Chama Cha Mapinduzi Party had been financed in part by the State, the party now had to return assets. For example, one of the buildings which was constructed for the party will become instead a building for Parliament. Since funding for the party could only come from voluntary contributions, it had been forced to reduce its activities.

154. The representative pointed out that the new Constitution did not specify whether domestic law or international law prevailed in situations of conflict between the Constitution and one of the international human rights instruments. In actual practice, the international human rights treaties were not self-executing but required implementing legislation. This would mean that, in case of a conflict, the Constitution would prevail. With respect to the

interpretative decisions issuing from the Constitutional Court, those decisions were definitive and carried the force of law. The Constitution provided that those decisions did not have to be reviewed by Parliament.

Right to life, treatment of prisoners and other detainees, liberty and security of person and right to a fair trial

155. With respect to those issues, the Committee wished to know the figures for death sentences which had been imposed and carried out over the last 10 years; what were the reasons for differences in policy between the mainland and Zanzibar as suggested in paragraph 72 of the report; with reference to paragraph 67 of the report, how the right of persons sentenced to death to seek pardon or commutation, pursuant to article 6, paragraph 4 of the Covenant, was ensured; what were the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, whether such allegations had been investigated, those responsible punished, and measures taken to prevent their recurrence; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and how these provisions had been made known to the concerned police, armed forces, and prison personnel as well as, in general, to all persons responsible for holding interrogations; in view of its role in securing the rights under the Covenant, what the position of the legal profession was in law and practice and whether it had been influenced by recent amendments to the Constitution and statutes; and whether there was any free legal aid and advisory scheme and, if so, how it operated or, if not, how compliance with article 14, paragraph (3) (d), of the Covenant was ensured. Further information was requested with reference to paragraph 75 of the report, on measures taken by the Government in the field of health care, particularly with a view to reducing infant mortality.

156. In addition, members of the Committee wished to know for how long after his arrest a detainee could be kept from contacting legal counsel; whether section 148 (4) of the Criminal Procedure Act of 1985 concerning the powers of the court to grant bail had been declared unconstitutional and subsequently abrogated; whether it was foreseen to modify section 44 (1) of the Civil Procedure Act, providing that a debtor could be arrested and detained, which is contrary to the Covenant; what kinds of cases could be brought before a Primary Court; whether the decision to impose imprisonment on a juvenile offender, rather than rehabilitative alternatives to incarceration, was made at the discretion of the sentencing judge; what measures had been taken towards the prevention of torture and other inhuman treatment, and whether instances of its use were rapidly and severely suppressed; whether the subjection of a person to medical or scientific experiments, without his or her free consent, was expressly prohibited under Tanzanian legislation; what type of corporal punishment was imposed on offenders convicted of rape or other violent crime; on what grounds had 14 members of a Burundi opposition group been taken into custody by authorities in Tanzania; whether the President was still able to order the arrest and detention without bail of any person he considered dangerous to the public order or national security; and whether there had been executions carried out in secret and, if so, why they had been carried out in this manner. Members also requested further information concerning the system of residence zones employed with respect to the issuance of residence permits to immigrants; on the amendment passed in 1985 to bring the Preventive Detention Act of 1962 into conformity with the Covenant; on resort to corporal punishment in sentencing and in the schools; and on the factors and difficulties encountered in the application of article 14 of the Covenant.

157. In response, the representative of the reporting State noted that only a very small number of death sentences had been carried out. Only the High Court

and the Court of Appeal could hand down a death sentence and such a sentence had to be approved by the President himself. The considerable time lapse between the verdict and the execution allowed ample opportunity for a presidential pardon. In regard to the differences in policy between the mainland and the island, Zanzibar maintained its own Constitution in addition to the Union Constitution that covered both. As far as differences in legislation was concerned, if there was no specific statement that a particular law applied to Zanzibar as well as to the mainland, Zanzibar was assumed to have its own separate legislation. The judiciary was separate, one Attorney-General serving for the mainland and another for Zanzibar.

158. In cases where there had been a misuse of firearms by police and security forces, action was always taken against the security officers involved. The Standard Minimum Rules for the Treatment of Prisoners were being complied with, though problems sometimes occurred. Efforts were consistently made to educate police officers in this regard through national seminars organized by the Minister of Home Affairs and through the provision of fellowships for officers to attend seminars abroad. Medical services were available to prisoners in their places of detention. When necessary, prisoners were transported under security to hospitals for treatment.

159. Section 54 (1) of the Criminal Procedure Act stipulated that, when arresting an individual, a police officer must inform that person of his rights in a language he understood. One of those rights was to contact a friend, a relative or a lawyer. The lawyer could either be chosen by the individual or one assigned by the Government. All persons who were arrested had to be brought before a judge within 24 hours, except in situations where the arrest had taken place on a Friday, in which case arraignment before a judge would take place on the Monday. In rural areas where there were no judges and there may be transport problems, villages had a court composed of police for the preliminary examination of cases before they were sent to district courts. The justice of the peace who presides over such a court is not a professional judge but may, none the less be familiar with minor infractions.

160. In regard to how confessions induced by force might be used, section 29 of the Evidence Act stipulated that no confessions could be used as evidence if the court was of the opinion that they had been induced in circumstances that were likely to cause an untrue admission of guilt to be made. Section 27 (3) of the same Act defined a confession as involuntary if the court believed that it had been induced by a threat or promise on the part of police officers or other authorities.

161. There was a large number of lawyers in the country. The Government was endeavouring to ensure that legal services were available to the entire population, not only the fortunate few who could afford the cost of private legal services. Presently, the Legal Aid Committee of the University of Dar-es-Salaam and the Tanganyika Law Society assisted individuals who had legal problems but could not afford to engage a lawyer. Additionally, the Tanzania Women Lawyers' Association had recently been established for the purpose of assisting women who could not afford private legal services.

162. With regard to the imprisonment of children, the Child and Young Persons Act governed court decisions on offences committed by persons under the age of 16. It provided for the handling of such cases in a Juvenile Court, which was essentially a district court whose proceedings were closed to the public. Among many other provisions, the Act indicated that police officers must immediately contact a young person's parent or guardian to enable them to post bail as soon as possible after he or she was arrested. It stipulated that no child should be sentenced to imprisonment and that young people, if so

sentenced, must not be allowed to associate with adult prisoners. It was made clear that young people should not be imprisoned except for the commission of serious offences.

Freedom of expression, assembly and movement

163. Regarding those issues, the Committee wished to know whether a citizen who disagreed with the political programme of the Government was free to express his views publicly; what the "established forums" mentioned in the Constitution and paragraph 15 of the report were; with reference to paragraph 181 of the report, what the term "major qualification" for the formation of political parties meant; and how the right to form trade unions was ensured in practice. Members of the Committee also wished to know how control was exercised by the State over radio and television and whether that would change with the emergence of a multi-party system; whether persons considered as a threat to public order (ordre public) could be expelled from the United Republic of Tanzania or exiled to another part of the country; whether censorship existed with regard to the press; and whether newspapers and other publications in the country experienced problems in securing sufficient supplies of paper. Members requested further information on the restrictions in force concerning the exercise of freedom of expression.

164. In her reply, the representative of the State party stated that JUWATA, which previously had been the only union in the country, had recently been dissolved and replaced by the Organization of Tanzanian Trade Unions (OTTU). There were now a number of unions, including a union for students, and there were many professional organizations as well. It was expected that as the multi-party system developed, there would be many more unions than there were at present.

Equality of the sexes, non-discrimination and rights of persons belonging to minorities

165. With regard to those issues, the Committee wished to know whether any additional measures were being contemplated to guarantee equality of the sexes; in what respects the rights of aliens differed from those of the citizens; and what ethnic, religious or linguistic minorities existed in the United Republic of Tanzania.

166. Replying to the questions, the representative of the State party pointed out that the country's 127 tribes coexisted in peace and constituted a single nation. Although Swahili was the language common to all, each region also had its own language. Freedom of religion was guaranteed to all and, in this regard, there were a number of different faiths practised in the country. With respect to foreigners, they had the same rights as citizens. There were some restrictions, however, which chiefly concerned the right to vote and the right to work. The rights of the nearly 300,000 refugees living in the United Republic of Tanzania were also guaranteed.

167. Referring to the question of the equality of women, the Government had taken many steps to enhance the status of women. In 1978, for example, a system had been introduced to enable more women to attend universities. In Parliament, a specific number of seats were reserved for women. Additionally, there were women who were senior government officials, ambassadors, etc.

Concluding observations by individual members

168. The members of the Committee commended the frankness and sincerity of the Tanzanian delegation which had contributed to ensuring a fruitful dialogue. The

report represented enormous progress compared to the rather brief previous report the State party had submitted.

169. Members of the Committee noted that a number of important developments were under way, most notably amendments to the Constitution and the restructuring of the political framework to achieve greater democracy through a multi-party system. Members expressed the hope that the transition to a new political system would take place in a spirit of openness, and that different parties would be allowed to establish themselves with equal access to the media. In that regard, it would also be helpful to dispense with the requirement of prior authorization for political meetings.

170. The State party had acknowledged in its report that there were some gaps and deficiencies in its legal system which indicated that it was not in full compliance with the articles of the Covenant. Various legal - and especially penal - provisions needed to be reviewed, particularly those relating to torture, family law and freedom of movement and residence. It was also noted that section 30 of the Constitution provided for very general restrictions on certain rights, in particular those set forth in articles 6 and 8 of the Covenant. Furthermore, section 25 of the Constitution raised problems in regard to the issue of forced labour, an area where there was clearly a need to ensure conformity with standards of the International Labour Organization.

171. Members of the Committee expressed concern over the constitutional provisions allowing derogations from the right to life, which were not compatible with article 4 of the Covenant. In this regard, changes were clearly necessary. The President's authority to order arrests also seemed excessive and not in conformity with article 9 of the Covenant. It was unfortunate that no figures could be made available on death sentences carried out in the previous 10 years. In this regard, it was pointed out that information on death sentences needed to be monitored carefully by any State and did not require a large statistical database.

172. Concern was expressed over the lack of clarity in the situation in Zanzibar. The Committee had been informed that there were no political prisoners in Zanzibar, yet numerous cases of political detention had been reported.

173. The view was expressed that it was degrading treatment to apply corporal punishment in schools and other institutions. Children should be treated with respect for their integrity and teachers should be able to maintain authority without resorting to such primitive measures. The use of flogging and similar punishments in sentencing was not compatible with the Covenant.

174. Although there had been some progress towards equality between men and women, there still appeared to be a lack of equality, especially with respect to property, inheritance and parental authority, and it was hoped that those forms of discrimination would be prohibited in the future.

175. Another matter that deserved high priority was the dissemination of information on the provisions of the Covenant in schools and universities and among members of the legal profession.

176. The representative of the State party stated that the delegation would transmit the results of the dialogue to its Government, placing particular emphasis on aspects of the legal system which needed to be modified in order to ensure conformity with the Covenant. Under the multi-party system there would be more transparency and political freedom and, it was hoped, a considerable improvement in those human rights areas which showed deficiency.

177. The Chairman of the Committee expressed his appreciation for the expertise of the delegation. The Committee had recognized that the report was an excellent and informative one and was helpful in demonstrating the difficulties encountered by the State party in meeting its obligations under the Covenant. Since the State party was passing through a transition period accompanied by a revision of existing laws and regulations, the Committee had viewed the dialogue with the delegation as an opportunity to assist the authorities in their efforts. The dialogue had been a useful one and he hoped that the delegation would convey to the Government all the comments made by members of the Committee.

Comments of the Committee

178. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

179. The Committee compliments the State party on the high quality of its report. In addition to giving the relevant laws and regulations, the report contains detailed information on actual practice and the factors and difficulties affecting the implementation of the Covenant. The Committee notes with satisfaction that the report includes a candid appraisal of existing legislative deficiencies in the light of the relevant general comments adopted by the Committee. The Committee, however, regrets that the report was submitted after a delay of some five years and expects that, given the reporting experience which the State party has now acquired, similar delays will not occur in the future.

180. The Committee observes that answers provided by the delegation to the numerous questions raised by members of the Committee greatly contributed in the consideration of the report and in establishing a constructive dialogue.

Positive aspects

181. The Committee welcomes the measures undertaken by the State party and the substantive progress recently achieved towards democratization, which should provide a more effective legal framework for the effective application of the Covenant. The Committee also notes with satisfaction that a bill of rights has been incorporated into the Constitution; that political parties are now being registered under a multi-party system and that the first multi-party elections to the National Assembly and to the Presidency have been scheduled; and that a more important role is foreseen for the judiciary in the protection of human rights.

Factors and difficulties impeding the application of the Covenant

182. The Committee notes that some aspects of democratic reform may have been adversely affected by structural adjustment policies tending to decrease the resources available for implementing those reforms. At the same time, the Committee underlines that this does not exempt the State party from the full and effective application of the Covenant.

Principal subjects of concern

183. While welcoming the wide-ranging political and legal reforms in progress, the Committee recognizes that the transition to true democracy is far from complete. A number of gaps still need to be addressed regarding present legislation and the guarantees provided for under the Covenant. The Committee emphasizes that, in undertaking any review of existing national law and in formulating new legislation and administrative rules, a primary consideration should be compatibility with the provisions of the Covenant.

184. The Committee is concerned over the unclear position of the Covenant in national law, particularly in cases where conflicts could arise between the Covenant and the Constitution. In this regard, article 32 of the Constitution regarding emergencies is clearly not in conformity with the international obligations of the State party under article 4 of the Covenant. Under that provision no derogation is permissible from certain fundamental rights, among which is the right to life. The Committee is concerned that the grounds for declaring a state of emergency are too broad and that the extraordinary powers of the President in an emergency are too sweeping. Other concerns of the Committee in regard to specific provisions of the Constitution which are incompatible with the Covenant include article 30 (1) which provides a wide

scope for limitations of rights and freedoms and article 25 which provides for the possibility of forced labour.

185. Other areas of concern include the unavailability of statistics concerning the application of the death penalty; the extraordinary powers accorded to the President with regard to preventative detention; the extent of delays with regard to the scheduling of criminal proceedings; the restriction of the right to peaceful assembly by the requirement of pre-permission by local authorities; insufficient publicity given to the Covenant with the result that the general public may not be informed of the protections afforded under it; continuing inequality with regard to the status of women; and the continued use of corporal punishment, the application of which the Committee considers to be degrading and inhuman treatment.

186. Additionally, the Committee is concerned that some aspects of customary law which are still being applied in many of the lower courts may not be in compliance with the provisions of the Covenant.

Suggestions and recommendations

187. The Committee recommends that the State party should provide a clear legal basis for giving full effect to the provisions of the Covenant. The Committee further suggests the enactment of legislation to provide that customary law, which is incompatible with the provisions of the Covenant, is null and void.

188. The Committee recommends the amendment of those provisions of the Constitution and other national law which are not in conformity with the Covenant. In particular, the Committee suggests that a thorough review be undertaken of provisions relating to states of emergency with a view to ensuring their full compatibility with article 4 of the Covenant in all respects. The Committee affirms the vital role played by the responsible exercise of the freedom of expression in the transition to democracy and recommends that the State party ensure that the exercise of this right be fully respected. Steps should also be taken to guarantee freedom of assembly without the requirement for pre-permission or such other restrictions as may jeopardize the freedom in question without necessarily being a threat to public order. Ongoing and active monitoring should be undertaken to ensure that democratic guarantees which have recently been established in law are observed in practice. To this end, the Committee considers that an active and independent judiciary is indispensable and recommends that measures be taken in this regard to further strengthen it.

189. The Committee considers that active measures should be taken to ensure that the provisions of the Covenant are made widely known to the general public and, in particular, to members of the judiciary and the legal and other professions most directly concerned with its application. Both Covenants should be translated into the national language, Swahili, and integrated into educational curricula at all levels. Although welcoming the improvements made with respect to ensuring equal opportunity for women, the Committee notes that the situation still warrants further progress, particularly in relation to property and inheritance rights and questions concerning parental authority.

Islamic Republic of Iran

190. The Committee considered the second periodic report of the Islamic Republic of Iran (CCPR/C/28/Add.15) at its 1193rd to 1196th, 1230th to 1231st and 1251st to 1253rd meetings, held on 29 and 30 October 1992, 7 April and 22 and 23 July 1993 (see CCPR/C/28/Add.15, paras. 180-212, 213-227 and 228-245, respectively) (CCPR/C/SR.1193-1196, 1230-1231 and 1251-1253). (For the composition of the delegation, see annex XI.)

191. The report was introduced by the representative of the State party, who said that the Covenant was considered by the authorities as a valuable instrument whose correct enforcement could help to preserve the inherent value and dignity of human beings. The Islamic Republic of Iran endeavoured to implement the principles of the Covenant and thereby to attain social justice. If any violations were committed by the authorities, efforts were made to put an end to them.

192. Based on the will of the people, the objective of the Government was to establish justice, equity, political and economic freedom, solidarity among nations and avoidance of tyranny. From its inception, the Islamic Republic of Iran had made every effort to set up the necessary institutions to that end and restore them after a cruel war which had devastating effects and caused irreparable damage. A number of parliamentary, presidential and other elections and referendums had been held, the judicial order had been reorganized and steady progress was being achieved in improving the performance of the legal system and the protection of people's rights. A number of human rights seminars had been convened in the country with the Government's participation and, following the cessation of hostilities, the Islamic Republic of Iran had entered into close cooperation with the United Nations on human rights matters. Furthermore, there was a human rights office within the Ministry of Foreign Affairs and a course on human rights was given in the Faculty of Law.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination and equality of the sexes

193. With regard to those issues, the Committee wished to know what the status of the Covenant was within the Iranian legal system; whether individuals could invoke its provisions directly before the courts; how a conflict arising between the provisions of the Covenant and Islamic law was resolved; whether, in view of the statement made by the representative of the Islamic Republic of Iran during the consideration of the initial report, any general review of compatibility of the provisions of the Covenant with Islamic law had been undertaken; whether the Guardian Council, provided for under article 91 of the Constitution, had the opportunity to pronounce itself on the compatibility of legislation with Islam; whether provisions in articles 3 and 20 of the Constitution providing for the equal protection under the law of all citizens of the country, in conformity with Islamic criteria, were compatible with articles 2, paragraph 1, and 26 of the Covenant; and in which respect, other than the exercise of political rights were, the rights of aliens restricted as compared with those of citizens. Members also wished to receive further information on the participation of women in the political and economic life of the country; on the application in practice of legal provisions concerning the dowry system; on the impact of article 2 (1) of the Constitution upon the provisions of article 26 of the Covenant, in respect of all the citizens of the Islamic Republic of Iran; and on the law and practice relating to the employment of minors.

194. In addition, members wished to receive information on the extent to which limitations to the enjoyment of human rights and freedoms imposed during the war were still being retained; on activities relating to the promotion of greater public awareness of the provisions of the Covenant; on the functions and activities of the Administrative Justice Tribunal; on the role of the clergy in the judiciary; on the extent of liability of civil servants for damage caused in the discharge of their duties; and on the jurisdiction of the military courts and on means of appeal from their decisions. It was also asked whether persons born out of wedlock were excluded from the judiciary; what safeguards and remedies were available to an individual during a state of emergency; and whether any notification under article 4, paragraph 3, of the Covenant had ever

been made by the Islamic Republic of Iran to the Secretary-General. In that connection it was asked why martial law had not been declared during the war.

195. Many clarifications were requested regarding the implementation of article 3 of the Covenant, with particular reference to the dress code for women and the measures allegedly taken against women not complying with the code; the extremely high level of female illiteracy; discriminatory provisions regarding marriage, divorce and the right to work; and the differing legal provisions and penalties applicable to men and women in the case of adultery, inheritance, transmission of nationality and freedom of movement. Clarifications were also requested as to allegations that Iranian women demonstrating against practices relating to the Islamic dress code for women in June 1991 had been killed by revolutionary guards and as to the distinction between permanent and temporary marriages. It was also asked whether the Act of 14 May 1982 which stipulated that judges were to be chosen from among men was compatible with article 3 of the Covenant and whether women could travel abroad without the consent of their spouses.

196. Members wished to know whether there was any statutory prohibition of discrimination on grounds of political opinion or national origin; whether adherents of religions not enumerated in the report were accorded the same treatment as the listed religions; and what the situation was of linguistic or national minorities. In that connection, clarifications were requested regarding members of the Baha'i community and the many difficulties they were reported to face, including prohibition of the practice of their religion, dismissal from public employment, exclusion from university education, bans on the setting up of businesses, restrictions on freedom of movement and the demolition of some of their places of worship. More generally, clarifications were requested regarding the legal provisions relating to the rights of individuals acting contrary to the precepts of Islam or plotting against the State.

197. In his reply, the representative of the State party said that, in accordance with articles 77 and 125 of the Constitution, the Covenant was an integral part of Iranian law. Many of the general principles set out in the Covenant had, in fact, already been reflected in domestic legislation. It was thus unlikely that a conflict would arise between it and other provisions of domestic law. If one did, the conflict would be resolved in accordance with domestic legislation. In making decisions, judges could invoke articles of the Covenant, but there had never been an instance in which a provision of domestic law had been found to be in conflict with the principles set out in the Covenant. The Legal Department of the Judiciary, which elucidated matters that might be unclear, had given an advisory opinion to the effect that there would be no difficulty involved in invoking the Covenant before the courts.

198. Many nations had misgivings about the mechanical application of international human rights instruments and believed that the traditions, culture and religious context of a country should be taken into account in evaluating the human rights situation there. Study of the Islamic Declaration of Human Rights would bring out what was, in the Islamic countries' view, lacking in the Universal Declaration of Human Rights and the Covenant. Some differences of interpretation were possible and the provisions of the Covenant might not be fully consistent with Islamic law. The fact remained that the Iranian Constitution embodied the basic principle of respect for justice set out in the Covenant. It was wrong to overstate the differences between domestic legislation and the Covenant and to take a rigid stand that would do no one any good. Now that the country was no longer on a war footing, steps had been taken to improve the Iranian people's awareness of the rights set out in the Covenant,

for example by organizing courses on human rights for civil servants and lawyers.

199. The duties of the Guardian's Council were to scrutinize all the laws passed by Majlies to ensure that they did not infringe the principles of the Constitution. Although it had not yet handed down any decision dealing specifically with human rights, all its decisions reflected a regard for the freedom and equality of the individual before the law. The functions of the Administrative Justice Tribunal were to investigate complaints, grievances and objections with respect to government officials, organs and statutes. Anyone had the right to apply to it for the annulment of any statute or regulation that was in conflict with the laws or the norms of Islam, or of measures falling outside the competence of the executive power. Judges were appointed having regard to their qualifications and experience to serve within a legal system that was based on the principles of Islam. Since the Revolution, members of the clergy had been able to act as judges if they were qualified and had received professional training.

200. Referring to questions raised relating to non-discrimination and equality of the sexes, the representative of the State party explained that there was no conflict between the Covenant and articles 3 and 20 of the Constitution. Article 21 of the Constitution required the Government to ensure the rights of women in all respects. Some distinctions had, however, to be made between men and women since they differed by nature. Only women could bear children, for instance, and the law had to make some special provisions for them. Under Iranian law, they were given longer holidays than men and the kind of work they performed had to take account of their welfare. The Labour Code specified that women had to receive the same pay as men for work of equal value and established many rules aimed at improving the welfare and status of women. Other measures to ensure protection for women included a law recently passed by Parliament that incorporated social security rights for widows and divorced women.

201. The scope of women's activities in social, political and economic affairs had expanded notably. A number of bodies were actively engaged in efforts to improve the status of women. A Women's Cultural and Social Council had prepared a draft charter of women's rights, family committees met once a week to review legislation and make proposals, and a Presidential Adviser on Women's Issues had been appointed. In the most recent parliamentary elections, 90 women candidates had stood for office and 9 of them had been elected. A total of 443,840 women were employed in the various ministries, government offices and departments and, of that number, 45 per cent were directors of offices or departments. Twenty-five per cent of all attorneys were women and there were many women doctors and graduates of higher educational institutions. The claim that 89 per cent of Iranian women were illiterate and that girls' schools in rural areas had been closed down for lack of women teachers was entirely erroneous. Some 300,000 women and girls had been members of various sports committees.

202. The dowry system existed in all Islamic countries and represented a form of protection and security for women and a way of establishing financial equality between men and women. Throughout the marriage, the man bore all the household expenses and the expenses of the wife and children. In view of all those considerations, the fact that the woman's share of the inheritance was only half that of the man could not be regarded as discriminatory. On the question of divorce, there was now a special civil court in which a divorce petition could be brought either by the husband or by the wife. Islamic theologians had declared women ineligible for investigating cases or rendering judgements; that rule was applied throughout the Islamic world. The need to employ more women in various positions in the judicial branch had, however, been recognized by the President of the Judiciary and by the Faculty of Law. It was anticipated that

an announcement would be made early in 1993 inviting women to apply for posts in that branch.

203. Most Muslim women preferred to wear traditional garments outside the home. The choice was a moral and religious one taken to respect Islamic law, and their wish should be respected. On occasion the Government had had to intervene in order to maintain public order in situations where excesses might have occurred, but the clashes had been due to differences in interpretation of cultural and religious criteria. Experts were studying possible changes. The philosophy underlying the institution of the temporary marriage contract was that since a permanent contract required the commitment of resources that were perhaps beyond the means of young people, a temporary contract would enable such individuals to legitimate their situation even before they had acquired the necessary means. In such marriages, the husband had to pay a dowry but was not obliged to meet all the living expenses of the wife.

204. Responding to other questions, the representative explained that, even when an individual had committed an offence under article 14 of the Constitution, such as conspiracy against the Islamic Republic of Iran, his human rights were preserved. The monotheism practised in the Islamic Republic of Iran was in no way in conflict with the principles of human rights. In the Islamic Republic of Iran, society and the social order were governed by Islamic principles. The rules and laws were not immutable and could be amended in the light of changing circumstances. Theologians and qualified experts were given the task of adapting Islamic precepts to the conditions of modern society and could recommend the amendment of legislation. The fact of belonging to a particular religion, race or ethnic group did not bestow any privilege. The Constitution stipulated that there had to be one Jewish, one Zoroastrian and three Christian representatives in Parliament. The Baha'i had not been accorded the same advantages as practitioners of other religions since it would be impractical to extend such advantages indiscriminately. The emergence of the Baha'i faith nearly 150 years ago had been accompanied by serious social conflicts, violence and death. That historical background and the fact that the Baha'i presented their faith as the exclusive gateway to God, accounted for the intensity of the reaction among the country's Muslim population to the proselytising efforts. Nevertheless, the Government and the judiciary always endeavoured to defuse confrontation and preserve the rights of the Baha'i.

205. Under domestic legislation, certain restrictions had been placed on foreigners in such areas as ownership rights and the right to form companies dealing with commerce, industry, agriculture or mining. The employment of minors under the age of 15 was forbidden under the labour legislation. Minors over the age of 15 could be employed provided certain regulations designed to protect the right of such minors were observed.

Right to life, treatment of prisoners and other detainees and liberty and security of person

206. With reference to that issue, the Committee wished to know how often and for what crimes the death penalty had been imposed and carried out since the consideration of the initial report; which offences, if any, other than those mentioned in paragraph 59 of the report, were punishable by the death penalty; whether Iranian law was in conformity with article 6, paragraph 2, of the Covenant which provided that the death penalty should be imposed only for the most serious crimes; whether any revisions of the law, with a view to curtailing the number of offences currently punishable by the death penalty, were being contemplated; how articles 18, 205, 219 and 257 of the Islamic Punishment Law were applied in practice; whether there had been any public executions in the Islamic Republic of Iran and, if so, whether that procedure was compatible with

articles 6 and 7 of the Covenant; whether there had been any complaints during the period under review of alleged disappearances and extrajudicial executions and, if so, whether such allegations had been investigated and with what results; and what measures had been taken to prevent the recurrence of such practices. Members also wished to know what were the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of such rules and regulations and, if so, what measures had been taken to prevent their recurrence; what concrete measures had been taken by the authorities to ensure the strictest observance of article 7 of the Covenant; whether confessions or testimony obtained under torture could be used in court proceedings; what the arrangements were for the supervision of places of detention and for receiving and investigating complaints; what the maximum time-limits were for remand in custody and pre-trial detention; how quickly after arrest a person's family was informed and how quickly after arrest a person could contact a lawyer; and whether the provisions relating to incommunicado detention were compatible with articles 7 and 10 of the Covenant.

207. In addition, clarification was requested of the rule that an individual would not be liable to the death penalty if convicted of murdering a mentally-ill person; the provisions of article 19 of the Penal Code under which persons convicted of adultery were liable to death by stoning; the consistency with article 6, paragraph 2, of the Covenant of death sentences for apostasy, corruption, opposition to Islam and fraud; cases in which a death sentence could be imposed on the basis of Islamic sources and religious orders; and the many death sentences reported to have been imposed on political grounds in 1988-1989. Members also asked whether appeals could be made against death sentences; under what legislation Baha'is had been sentenced to death; and whether the fatwa authorizing the execution of prisoners who did not perform their religious duties in prison was still in force.

208. Clarifications were also requested regarding the death sentence on the writer Salman Rushdie and the consistency of the sentence with article 6, paragraph 2, and articles 18 and 19 of the Covenant. In particular, it was asked what competent court, within the meaning of article 6 of the Covenant had imposed the sentence; and whether writing an offensive work could be regarded as a most serious crime within the meaning of article 6 of the Covenant.

209. Clarifications were also sought regarding the consistency with articles 7 and 10 of the Covenant of "legal sanctions", such as flogging, stoning or amputation of fingers for theft. It was also asked whether there had been any investigation of the extremely high number of cases of extrajudicial executions, disappearances, torture and ill-treatment that had been brought to the attention of the Islamic Republic of Iran, particularly by the Special Representative of the Commission on Human Rights; how certain dramatically staged executions in which offenders were crucified or thrown from a high place could be reconciled with the Covenant; whether a political detainee who had served his sentence had to sign a declaration of repentance before he could be released; and what action had been taken to implement the November 1991 agreement authorizing the International Committee of the Red Cross to make regular visits to prisons.

210. In response to the Committee's questions, the representative of the State party said that the death sentence could be imposed for the most serious crimes such as homicide, premeditated murder, armed robbery, drug trafficking, armed rebellion and complicity in murder, kidnapping or rape. Depending on the circumstances, offenders might be sentenced to imprisonment, capital punishment being reserved for the most serious crimes in accordance with article 6, paragraph 2, of the Covenant. The Iranian authorities had instituted safeguards to limit as far as possible the imposition of death sentences. A newly established unit in the Office of the Public Prosecutor was looking into the

best ways of combating crime. The Government regretted the number of executions, shortly after the Revolution, of supporters of the old regime who had helped to destroy the country's basic institutions, as well as the executions of collaborators with the enemy after the war that had been waged against the Islamic Republic of Iran. Both situations had been exceptional.

211. Under articles 219 and 257 of the Islamic Law on the prevention of crime, the death sentence could be carried out only with the consent of the victim's next of kin. The latter could agree to commutation of the sentence. It had been believed that public executions would have a deterrent effect. In view, however, of their possible undesirable psychological effects on the population, executions were now as a rule carried out inside penal establishments. No complaints alleging disappearances or extrajudicial executions had been lodged in the Islamic Republic of Iran. The cases mentioned in the report of the Special Representative of the Commission on Human Rights had been investigated and the results had been made public, but most were still under investigation. In the early days of the revolution, there were cases in which members of the old regime were attacked or killed. When the facts were clear, the Government had taken steps to prosecute those responsible.

212. Iranian law established the principle that any penalty imposed must be provided for by law and could only be applied in accordance with the decision of a court of law. Officials denying a hearing to a person imprisoned in violation of the law were dismissed or barred from civil service employment. Anyone responsible for acts of torture or death threats must submit himself to the law on compensation or be imprisoned. A law enacted under the old regime specified that members of the armed forces could use their firearms when they had to defend themselves against armed attack; when they were attacked and a firearm was their sole means of defence; to protect the life of a person or persons in danger; against a fugitive prisoner if the latter was armed and dangerous; and to defend property and installations placed under the care of the military authorities. A law had recently been promulgated which provided that any member of the armed forces who violated those regulations committed an offence for which he was accountable.

213. Article 38 of the Constitution prohibited all forms of torture used to extract confessions or obtain information. It was forbidden to force anyone to testify, confess or swear an oath against his will. Offenders were punished in accordance with the law. If a prisoner was treated in an unlawful way he could lodge a complaint, and the prison governor was obliged to transmit his complaint to the competent authorities.

214. In case of arrest, the detainee had to be brought before the State Prosecutor within 24 hours for questioning. In straightforward cases he was charged and brought before a Court. In more difficult cases, the suspect could be remanded in custody for up to four months. The accused always had the right to communicate with his lawyer and his family. Under article 130 of the Code of Penal Procedure, the accused could not communicate with his family or friends if contacts with other persons could lead to destruction of evidence or collusion with witnesses.

215. In reply to additional questions raised in connection with articles 6 and 7 of the Covenant, the representative of the State party explained that a death sentence could be appealed in accordance with the Law pertaining to Revision of Court Judgements and the Manner of their Investigation adopted in 1988. In 1992, 920 cases decided by the Revolutionary Courts had actually been reviewed by the Supreme Court and 190 decisions had been nullified for various reasons, including improper legal procedures during the trial stage. With regard to the punishment of drug trafficking by death, he explained that narcotics trade had

developed at an alarmingly high rate through the country's unguarded eastern border, while the Government had been occupied in defending its western border during the nine-year war with Iraq. That situation had currently reached critical proportions which required a very tough approach if it was to be controlled.

216. Under Iranian law, no one could be executed for political reasons alone. Allegations that 2,500 persons had been executed for political reasons during the six-month period between mid-1988 and the beginning of 1989 were not true. Referring to a question raised on the alleged execution of an assistant professor at the University of Tabriz for having criticized the Government's economic and social policy the representative said that he had actually been sentenced to four months in prison and was still teaching at the University of Tabriz.

217. Referring to the death sentence passed on Mr. Salman Rushdie, the representative emphasized that Mr. Rushdie's book was a severe insult to Islam and to the prophet. Although article 19, paragraph 2, of the Covenant guaranteed the right to freedom of expression, its paragraph 3 stated that the exercise of that right carried with it special duties and responsibilities and might be subject to certain limitations. An individual who had disregarded those limitations should be punished. However, the Imam Khomeini, as a religious leader and not as a representative of the Government, had issued a religious decree. Any action taken in response to that fatwa would be based on an individual's religious belief.

218. According to article 23 of the Constitution, no one could be punished or prosecuted for his beliefs. No court had ever prosecuted any individual for his beliefs but even if it had, the Supreme Court would have prevented the sentence from being carried out. If persons belonging to non-Islamic religious denominations had been executed, it was because of crimes they had committed and not because of their beliefs. Two Baha'is said to have been executed had indeed been sentenced to death by a lower court on other charges, including treason, and the sentence had subsequently been set aside on appeal to the Supreme Court because the degree of treason had not warranted capital punishment and because the court had failed to appoint a lawyer even though the accused had refused legal representation.

219. Article 39 of the Constitution ensured that detained persons would be treated with respect and articles 58 and 59 of the Islamic Punishment Law provided for a penalty of up to one year imprisonment for the torture of an accused person. Iranian criminal law provided for certain forms of corporal punishment, including flogging and lapidation. If a court decided that a person who had been found guilty should be flogged, the flogging was not considered to be a form of torture, since that form of punishment existed under Islamic law. The availability of inflicting such forms of corporal punishment was currently being discussed at the highest levels of government, and for certain crimes the sentence of flogging had been abolished and commuted to imprisonment or the payment of a fine.

Right to a fair trial

220. With reference to that issue, the Committee wished to receive further information on provisions governing the tenure, dismissal and disciplining of members of the judiciary; on how the independence of the judiciary was ensured; on the jurisdiction and activities of the National General Inspectorate, the Administrative Justice Tribunal and the Revolutionary Courts; on the legal status of the revolutionary guards and the revolutionary prosecutors and on their relationship with ordinary courts; and on the organization and functioning

of the Bar. They also requested clarification of the statement in the report that prosecution, trial, issuance and enforcement of a retribution verdict depended on the request of the next of kin.

221. Moreover, members of the Committee requested further information on proceedings before the Revolutionary Courts and it was asked, in particular, whether their decisions could be appealed against; what the permitted grounds for appeal were; whether defendants before those courts had unlimited access to lawyers, adequate time and facilities for the preparation of their defence and the possibility of calling witnesses on their behalf; and whether trials before such courts were always held *in camera*. Clarification was requested as to the role of repentance in release of a sentenced person who had served his term; a statement in the report that courts of justice were to be formed in accordance with the criteria of Islam; the jurisdiction of the special clerical courts referred to in the report; the independence of the Bar Association and whether the Government was enabled to dismiss its members; and regarding reports that a woman was not considered a competent witness in connection with a serious criminal charge. It was also inquired whether a law had been adopted, pursuant to article 168 of the Constitution, regarding the definition of political offenses; whether those who had been sentenced as political prisoners were subject to recall; whether authoritative Islamic sources and authentic *fatwa* could be considered part of national law; and what remedies were available in the case of a discrepancy between *fatwa* and the applicable law.

222. In his reply, the representative of the State party said that the independence of the judiciary was guaranteed by the Constitution and that judges were elected on the basis of their professional qualifications and high moral character. If a judge was alleged to have committed an error, his actions were reviewed by a special disciplinary office, which took appropriate administrative measures. Furthermore, under article 164 of the Constitution, a judge could not be removed without proof that he had committed violations of the law. There were three law schools in Tehran which were open to both male and female students and there were plans to begin admitting women to the judicial colleges in 1994.

223. The National General Inspectorate monitored the administration of government and the implementation of the laws. He reviewed complaints brought by individuals and submitted reports to the parliamentary commission or to the relevant ministry for investigation. The Administrative Justice Tribunal reviewed complaints brought by individuals against government agencies. The powers and functions of the Revolutionary Courts, which had been established at the beginning of the Islamic Revolution, were stipulated in article 150 of the Constitution. The revolutionary guards were members of the armed forces and played a role in enforcing discipline.

224. The independence of the Bar was guaranteed by law and lawyers were free to accept any clients they wished. In all courts, including military courts, all defendants had the right to a lawyer. Inevitably, there were situations in which violations of that right occurred, but they were dealt with in an appropriate manner and many efforts had been made to improve the situation in recent years. In the case of accusations that were liable to capital punishment or to life imprisonment, it was compulsory to appoint a lawyer. Furthermore, defendants could have lawyers assigned to them free of charge if they were unable to pay.

225. All decisions of all courts were subject to appeal and, even in the case of murder convictions, they were not executed until all appeals had been exhausted or requests for clemency considered. Furthermore, the Constitution provided for

a waiting period between the rendering of a final decision and the execution of sentence. During that period, sentences could be appealed to the Supreme Court.

226. Responding to other questions, the representative of the State party explained that there was currently no definition of political offences and no law had been passed to implement or explain article 168 of the Constitution; the question was currently under review. Judges could only issue judgments on the basis of fatwa when the case in question was not covered by codified law. In the event of conflict between a fatwa and the civil law, the civil law always took precedence. Under article 165 of the Constitution, all trials had to be held openly, unless the court determined that an open trial would be detrimental to the morals of public order. He added that, although violations of proper procedures did inevitably occur, many of the reports concerning those cases were not properly documented and relied on unsubstantiated allegations.

Freedom of movement and expulsion of aliens

227. With regard to those issues, the Committee wished to receive information on the cases in which an individual might be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality; the compatibility of those provisions with article 12 of the Covenant; the enjoyment of the right of everyone to leave any country, including their own; and the conditions and procedures relating to the issuance of exit visas for foreigners whose duration of stay exceeded 90 days.

228. In his reply, the representative of the State party stated that, under article 90 of the Islamic Punishment Law, an individual who had committed certain crimes could receive banishment in addition to the punishment determined by the court. In the view of Iranian courts, that provision did not contradict article 12 of the Covenant.

229. Foreigners were granted visas according them the right to stay in the country for 90 days. If such foreigners could not renew their visas, and if they had no other legal status enabling them to remain in the country, they were compelled to leave. No governmental authority without a judicial decree could prevent an individual from leaving the country. Certain restrictions did however apply in the case of individuals who were being prosecuted, convicted criminals and in other limited legal circumstances.

230. In reply to additional questions raised in connection with articles 7 and 10 of the Covenant, the representative of the State party said that prisoners were released after completion of their sentence, unless they had committed a further offence in the meantime. Their repentance during the prison term was one of the factors that would be taken into account when considering the possibility of granting a pardon. He added that a parliamentary commission had recently been set up to investigate allegations of human rights violations. Its duties included making visits to prisons in order to deal with individual complaints and suggesting improvements where appropriate.

231. With reference to article 14 of the Covenant, the representative of the State party explained that any failure to ensure that legal proceedings before Revolutionary courts were held in public and in the presence of counsel constituted grounds for annulling those proceedings and revoking any sentences handed down. He added that, under article 167 of the Constitution, judgements were to be delivered, in the absence of a codified law, on the basis of authoritative Islamic sources and authentic fatwa. The Bar Association did not currently enjoy the right to elect its Board independently, but measures were being taken to give it fully independent status at an early date.

Freedom of religion and expression

232. With regard to that issue, the Committee wished to know whether, under article 18 of the Covenant, the rights of non-believers or followers of non-revealed religions were affected by the principle set out in article 2, paragraph 1, of the Constitution; what was the position of religious minorities that were not recognized by articles 12 and 13 of the Constitution, including the Baha'is; what was the meaning of the term conspiracy or activities against Islam and the Islamic Republic of Iran in the context of article 14 of the Constitution; what was the meaning of the statement in article 24 of the Constitution that the press was free, provided the matter written was not detrimental to the principle of Islam; how many newspapers there were in the country; and whether foreign publications were readily available.

233. The members of the Committee also asked for further details regarding the restrictions imposed on persons professing recognized religions and on the particular situation of those who professed religions that were not recognized, such as the Baha'is, who seemed to be subject to very severe restrictions. They referred in that connection to the report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1993/41), which drew attention to numerous cases of torture and ill-treatment inflicted on the members of that community as well as the destruction of holy places and cemeteries.

234. Further details were requested regarding the many restrictions placed on the exercise of freedom of speech and opinion, in particular in connection with freedom of the press, on grounds of protecting the interests of the country or the precepts of Islam, and the need for a permit for the possession of typewriters, photocopiers, fax machines or radios. Explanations were again asked for in connection with the sentencing to death of an author, Mr. Salman Rushdie, for his writings, and the compatibility of that sentence with the provisions of article 18 of the Covenant.

235. In his reply, the representative of the State party said that judicial rules and regulations applied to all citizens and that the rights of all individuals were ensured provided that they did not conspire against the system or commit crimes against it. The Constitution recognized three religions apart from Islam, namely the Jewish, Christian and Zoroastrian religions. Members of those religious minorities were free to practise their own rites and follow their own social customs in their personal life. The right of all individuals to pray and profess the religion of their choice was respected. No distinction was made in the Islamic Republic of Iran between recognized religions and others. The consequences of recognition were that, in matters of personal status and inheritance, marriage or divorce, the social rules of the religion professed by the person concerned were applicable. Choice of religion was a matter of individual free will and nobody could be punished on account of his religion. The Baha'is could, in their own communities, practise their rites in complete freedom. In addition, in response to the allegation that Baha'is' cemeteries had been destroyed, he explained that, according to the municipal authorities of Tehran, there had been no question of destroying tombs but rather of creating open spaces.

236. The term "conspiracy or activities against Islam and the Islamic Republic of Iran" had clearly been defined in the relevant rules and regulations as the action of individuals who endangered the security or independence of the country or of the Islamic system. Article 24 of the Constitution provided for freedom of the press within the limits of Islamic principles. If a publication deliberately set out to contravene and insult the beliefs of Islam, it would be banned. On the other hand, where individuals wished to engage in

rational academic discussion, they were free to do so even if they adopted an attitude hostile to Islam. Four hundred and fifty-seven licensed publications and most foreign newspapers were available in the Islamic Republic of Iran. The group responsible for examining applications for licences for publications consisted of a justice of the Supreme Court, a representative of the Ministry of Culture, a representative of Parliament, a university professor and a director of an organ of the press chosen by his peers. In general, the Islamic Republic of Iran complied strictly with the provisions of article 19, paragraph 3, and article 20 of the Covenant. The Committee should confine itself to considering the reports of States parties; matters such as the affair of Mr. Salman Rushdie and the Islamic Decree of which he was the object were entirely outside its terms of reference.

Freedom of assembly and association and right to participate in the conduct of public affairs

237. In connection with those issues, the Committee wished to receive further information concerning the number of trade unions and political parties in the Islamic Republic of Iran and how they were organized; and on the implementation in practice of the limitations to freedom of assembly and association provided for in articles 6 and 16 of the Law pertaining to Activities of Parties, Societies, Political and Professional Associations.

238. The members of the Committee also asked for explanations regarding the exact criteria limiting freedom of association; the possibility for Baha'is to join trade unions, establish associations or be employed in the public service; the small number of political groups authorized to take part in national political life; and the restrictions imposed on political activity, particularly in respect of contacts with foreign embassies and statements regarded as defamatory of the State.

239. In his reply, the representative of the State party explained that a very active labour organization existed for the benefit of all workers and covered 1,450 manufacturing units throughout the country. The political and social structure of the country consisted of 16 groups which were authorized to engage in political activities and a further 57 groups which engaged in social and political activities within the limits laid down in the Constitution. The members of the Islamic Consultative Assembly were elected directly by the Iranian people without the mediation of any of those groups. Article 16 of the Act pertaining to the Activities of Parties, Societies, Political and Professional Associations prohibited activities which might violate the independence of the country, attempts to exchange information with foreign powers, violations of the territorial integrity of the country, activities infringing the freedoms and right of others and any attempts to undermine the solidarity of the Iranian people. The restrictions imposed in Iranian law on freedom of association, assembly and peaceful demonstration were altogether analogous to those provided for in article 21 of the Covenant.

Rights of persons belonging to minorities

240. With reference to that issue, the Committee wished to know whether persons belonging to minorities, as defined under article 27 of the Covenant, were represented in the Islamic Consultative Assembly; and what arrangements had been made to secure the rights of persons of Kurdish origin, in particular in Kurdistan.

241. In addition, the members of the Committee asked for information on minorities other than religious minorities, on which the report gave no details, and the steps taken to protect their rights under article 27 of the Covenant;

and on the position of the authorities in response to allegations that Iranian Kurdish villages had recently been bombed.

242. In his reply, the representative of the State party stated that the religious minority groups recognized by the Constitution were represented in the Islamic Consultative Assembly by five members who were elected by the minority groups themselves. Representatives of those groups enjoyed the same rights as other members of the Assembly. There were no racial problems in the country and all groups, whether of Kurdish, Farsi, Baluchi or other origin, enjoyed equal rights and could engage in political activities or perform judicial functions on an equal basis. Anyone engaging in activities endangering the independence of the Islamic Republic of Iran, for example by promoting Kurdish ethnicity, would be liable to punishment. The members of minority groups such as Turks or Kurds were entirely free to speak their own language and to publish their own newspapers. The acts of violence against certain Kurdish villages which had been referred to were probably the result of hostilities being waged by neighbouring countries of the Islamic Republic of Iran.

Concluding observations by individual members

243. Members of the Committee thanked the delegation of the Islamic Republic of Iran for its appearance before the Committee to respond to numerous questions over the course of three consecutive sessions, as well as for its report which had largely followed the Committee's guidelines. The report, however, contained little reference to the implementation of the Covenant in practice and provided virtually no information about factors and difficulties impeding the application of the Covenant in the Islamic Republic of Iran. Members noted with interest that a Human Rights Office has been established within the Ministry for Foreign Affairs and welcomed the measures under consideration in the Islamic Republic of Iran to improve the status of women and to replace flogging by other forms of punishment. They also noted the efforts being undertaken to develop an awareness of human rights on the part of senior officials of ministries and administrations and that, at the time of the Gulf war, more than 1.5 million refugees had been sheltered by the Islamic Republic of Iran.

244. At the same time, members expressed concern at the extremely high number of death sentences that had been pronounced and carried out in the Islamic Republic of Iran during the period under review; the number of executions that had taken place in public as a result of trials in which the guarantees of due process of law had not been properly applied; about the death sentence that had been pronounced, without trial, in respect of a foreign writer, Mr. Salman Rushdie, for having produced a literary work; and at the many cases of extrajudicial executions, disappearances, torture and ill-treatment that had been brought to the Committee's attention and which were described, inter alia, in the last report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1993/41). The application of disciplinary measures of extreme severity, such as flogging, lapidation and amputation, was not considered to be compatible with the provisions of article 7 of the Covenant, and serious questions were raised about requiring repentance from detainees as a condition of their release from custody.

245. Members also deplored the lack of respect for due process of law, particularly before the Revolutionary courts as well as the lack of an independent Bar Association which had an adverse effect on the administration of justice. Concern was also expressed at the lack of transparency and predictability in the application of Iranian domestic law; at the numerous, explicit or implicit, limitations or restrictions associated with the protection of Islamic values; at the persistence and extent of discrimination against

women; about legal provisions allowing for the possibility of banishing individuals, preventing them from residing in the place of their choice, or compelling them to reside in a given locality, which were not compatible with article 12 of the Covenant; at the extent of limitations to the freedom of expression, assembly and association; and at the extent of the limitations and restrictions on the freedom of religion. They noted, in the latter regard, that conversions from Islam were prohibited and that followers of the three recognized religions (Christians, Jews and Zoroastrians) were facing serious difficulties in the enjoyment of their rights under article 18 of the Covenant. Moreover, concern was expressed about the extent of discrimination against followers of non-recognized religions, notably the Baha'is, whose rights under the Covenant were subject to extremely severe restrictions, some amounting to open violations of basic rights and liberties.

246. The representative of the State party thanked the members of the Committee for their demonstration of understanding and goodwill and for the various expressions of encouragement that had been voiced. He expressed the hope that, notwithstanding the note of scepticism that had also been sounded, the dialogue would be pursued. The dialogue with the Committee could only be useful if it provided some constructive criticism and an objective analysis of such inconsistencies with the Covenant as might still exist as well as suggestions for possible ways of resolving those problems. His delegation had benefited greatly from guidance offered by the Committee, which he would willingly convey to the competent authorities in his country with a view to improving the current situation. He reiterated the determination of the authorities to promote, inter alia, the entry of women into the magistrature as well as other professions.

247. In concluding the consideration of the second periodic report of the Islamic Republic of Iran, the Chairman thanked the delegation for its cooperation and emphasized that he had been encouraged by the assurance that the views of members of the Committee would be conveyed to the Iranian authorities for careful scrutiny.

Comments of the Committee

248. At its 1260th meeting (forty-eighth session), held on 29 July 1993, the Committee adopted the following comments.

Introduction

249. The Committee expresses appreciation to the State party for its report, which largely followed the Committee's guidelines regarding the form and contents of reports (CCPR/C/20/Rev.1) and which contained detailed information on some laws and regulations relating to the implementation of the provisions of the Covenant. However, the Committee notes that the report contained little reference to the implementation of the Covenant in practice and provided virtually no information about factors and difficulties impeding the application of the Covenant in the Islamic Republic of Iran.

250. The Committee regrets that, despite the delegation's efforts to respond to the numerous queries raised by members, the responses were not complete and the concerns of the Committee have not been adequately answered.

Positive aspects

251. The Committee takes satisfaction in the resumption of its dialogue with the Islamic Republic of Iran after a period of nearly 10 years. However, difficulties in the dialogue made it necessary for the Committee to invite the Islamic Republic of Iran to three consecutive sessions and the Committee appreciates the readiness of the State party to do so. It regards the request for the Committee's assistance in the State party's endeavour to bring its domestic law and practice more into line with the provisions of the Covenant as a particularly important feature of the State party representative's concluding remarks.

252. The Committee notes with interest the establishment of a Human Rights Office within the Ministry for Foreign Affairs, the measures under consideration in the Islamic Republic of Iran to improve the status of women and the promise to reconsider the question of corporal punishments. It also notes that efforts have been undertaken to develop an awareness of human rights on the part of senior officials of ministries and administrations, including the promise that the comments of the Committee would be brought to their attention. The Committee also appreciates the fact that, at the time of the Gulf war, more than 1.5 million refugees were sheltered by the Islamic Republic of Iran.

Factors and difficulties impeding the application of the Covenant

253. In view of the lack of transparency and predictability in the application of Iranian domestic law, the Committee has found it somewhat difficult to determine the extent to which the latter was compatible with the provisions of the Covenant. It also notes that numerous, explicit or implicit, limitations or restrictions associated with the protection of religious values, as interpreted by Iranian authorities, have also seriously impeded the enjoyment of some human rights protected under the Covenant.

254. Furthermore, the Committee observes that the emergency measures adopted by the authorities during the war with a neighbouring country, and the parallel destruction of the country's economy, have undoubtedly had negative effects on the enjoyment of the rights and freedoms provided for under the Covenant.

Principal subjects of concern

255. The Committee deplores the extremely high number of death sentences that were pronounced and carried out in the Islamic Republic of Iran during the period under review, many of which resulting from trials in which the guarantees of due process of law had not been properly applied. In the light of the provision of article 6 of the Covenant, requiring States parties that have not

abolished the death penalty to limit it to the most serious crimes, the Committee considers the imposition of that penalty for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life, as being contrary to the Covenant. The Committee also deplores that a number of executions have taken place in public.

256. The Committee also condemns the fact that a death sentence has been pronounced, without trial, in respect of a foreign writer, Mr. Salman Rushdie, for having produced a literary work and that general appeals have been made or condoned for its execution, even outside the territory of the Islamic Republic of Iran. The fact that the sentence was the result of a fatwa issued by a religious authority does not exempt the State party from its obligation to ensure to all individuals the rights provided for under the Covenant, in particular articles 6, 9, 14 and 19.

257. In addition, the Committee is concerned about the many cases of extrajudicial executions, disappearances, torture and ill-treatment of persons deprived of their liberty that have been brought to its attention and which are described, inter alia, in the last report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1993/41).

258. Furthermore, the Committee considers that the application of measures of punishment of extreme severity, such as flogging, lapidation and amputation, is not compatible with the provisions of article 7 of the Covenant. It also has serious questions about requiring repentance from detainees as a condition of their release from custody.

259. The Committee also deplores the lack of respect for due process of law, particularly before the Revolutionary courts, where trials in camera tend to be the rule and where apparently no real possibility is provided to the accused to prepare a defence. The lack of an independent Bar Association also has an adverse effect on the administration of justice, in the view of the Committee.

260. The Committee observes that the persistence and extent of discrimination against women is incompatible with the provisions of article 3 of the Covenant and refers, in particular, to the punishment and harassment of women who do not conform with a strict dress code; the need for women to obtain their husband's permission to leave home; their exclusion from the magistracy; discriminatory treatment in respect of the payment of compensation to the families of murder victims, depending on the victim's gender and in respect of the inheritance rights of women; prohibition against the practice of sports in public; and segregation from men in public transportation.

261. The Committee considers that legal provisions allowing for the possibility of banishing individuals, preventing them from residing in the place of their choice, or compelling them to reside in a given locality, are not compatible with article 12 of the Covenant.

262. Furthermore, the Committee is concerned at the extent of limitations to the freedom of expression, assembly and association, exemplified by articles 6 and 24 of the Constitution and article 16 of the Law Pertaining to Activities of Parties, Societies and Political and Professional Associations, noting in this connection that, contrary to the provisions of articles 18 and 19 of the Covenant, members of certain political parties who did not agree with what the authorities believe to be Islamic thinking or who expressed opinions in opposition to official positions have been discriminated against. Self-censorship also seems to be widespread in the media and severe limitations appear to have been placed upon the exercise of freedom of assembly and of association.

263. Finally, the Committee wishes to express its concern at the extent of the limitations and restrictions on the freedom of religion and belief, noting that conversion from Islam is punishable and that even followers of the three recognized religions are facing serious difficulties in the enjoyment of their rights under article 18 of the Covenant. The Committee is particularly disturbed about the extent of discrimination against followers of non-recognized religions, notably the Baha'is, whose rights under the Covenant are subject to extremely severe restrictions. In the foregoing connection, the Committee received no satisfactory answer regarding the destruction of places of worship or cemeteries and the systematic persecution, harassment and discrimination of the Baha'is, which is in clear contradiction with the provisions of the Covenant.

Suggestions and recommendations

264. The Committee recommends that the comments it has made in connection with the consideration of the second periodic report of the Islamic Republic of Iran should be studied by the authorities with a view to adopting necessary legal and practical measures to ensure the effective implementation of all the provisions of the Covenant. The Committee wishes, in particular, to emphasize the following suggestions and recommendations.

265. The Committee recommends that domestic laws should be revised with a view to curtailing the number of offences currently punishable by the death penalty and to reducing the number of executions. Public executions should be avoided and the accused should, in all cases, be provided with all necessary guarantees, including the right to a fair trial as provided for under article 14 of the Covenant.

266. Effective measures should be adopted to ensure the strictest observance of articles 7 and 10 of the Covenant. All complaints of extrajudicial executions, disappearances, torture and ill-treatment should be duly investigated, the culprits should be punished and measures should be taken to prevent any recurrence of such acts. Severe forms of punishment incompatible with the Covenant should be removed from law and practice and the conditions of detention of persons deprived of their liberty should be improved. The Committee also recommends that training courses should be organized for members of the police, the armed forces and the security forces as well as for other law enforcement officials, so as to better acquaint them with basic human rights principles and norms.

267. The Committee recommends that Iranian legislation and practice be brought into line with the provisions of articles 9 and 14 of the Covenant, which provide that all persons should have the right to a fair trial, including the assistance of counsel, the right to be brought promptly before a judge and the right to be tried in public. Urgent consideration should also be given to the abolition of the Revolutionary courts.

268. The Committee recommends that active measures should be taken to enhance the status of women in the Islamic Republic of Iran in accordance with articles 2, 3 and 23 of the Covenant and to guarantee their equal enjoyment of rights and freedoms.

269. The Committee recommends that its recently adopted general comment No. 22 (48) be studied by the authorities to bring its legislation and practice into line with the requirements of article 18 of the Covenant. In that regard, the Committee wishes to emphasize that recognition of a religion as a State religion should not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any

discrimination against adherents of other religions or non-believers, since the right to freedom of religion and belief and the prohibition of discrimination cannot be abrogated by the recognition of an official religion or belief. Measures restricting eligibility for government service to members of the predominant religion, or giving economic privileges to such persons, or imposing special restrictions on the practice of other faiths, are incompatible with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 of the Covenant.

270. The Committee also wishes to invite the Government of the Islamic Republic of Iran to undertake necessary steps to ensure that the rights enunciated in articles 17, 19, 21, 22 and 25 of the Covenant can be exercised without any limitations or restrictions other than those provided for in the Covenant.

Venezuela

271. The Committee considered the second periodic report of Venezuela (CCPR/C/37/Add.14) at its 1197th to 1199th meetings, on 2 and 3 November 1992 (see CCPR/C/SR.1197-1199). (For the composition of the delegation, see annex XI.)

272. The report was introduced by the representative of the State party who emphasized the progress made in the legislative field since the consideration of the initial report of his country. A number of provisions of the Civil Code incompatible with the Covenant, particularly those relating to the equality of husband and wife within marriage, had been amended. The Organic Law on the Protection of Constitutional Rights and Guarantees had been adopted in January 1988. It had introduced important improvements as far as the exercise of the remedy of *amparo* was concerned. Amendments had also been made to the Organic Labour Law to expand and strengthen the human rights of workers. As a demonstration of the strength of its democratic institutions, Venezuela was planning to hold elections for the posts of governors, mayors and councillors in December 1992. The Government had adopted a policy of informing, training and sensitizing the sectors concerned with the protection of human rights and was determined to punish those found guilty of violations of fundamental rights.

273. Referring to the factors and difficulties which had affected the implementation of the Covenant in Venezuela during the reporting period, the representative explained that, in February 1989, as a result of a series of economic measures taken by the Government, there had been a social explosion in the country which had had serious effects in the human rights field. There had been unprecedented outbursts of public violence or arbitrary behaviour on the part of law enforcement officials. On 4 February 1992, an attempted military coup had endangered the stability of the country's democratic system and made it necessary to suspend guarantees but they were restored on 23 April 1992.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family and children

274. With regard to those issues, the Committee wished to receive further information on the status of the Covenant within the Venezuelan legal system; on the possibility for individuals to invoke the provisions of the Covenant directly before the courts; on the impact of the entry into force of the Organic Law on Protection of Constitutional Rights and Guarantees on the implementation of human rights contained in the Covenant; on the conformity with article 4 of the Covenant of the reasons for declaring a state of emergency, referred to in paragraphs 52 to 56 of the report; on remedies available to individuals during the period of emergency; on measures taken to investigate cases of

disappearances, extrajudicial executions and other excesses committed during the state of emergency, to punish those found guilty, and to compensate the victims; on measures taken to prevent the recurrence of such acts; on the progress achieved since the adoption of amendments to the Civil Code and the Labour Code and of other reforms with a view to eliminating inequalities between men and women; on the law and practice relating to the employment of minors; and on the light work which minors under the age of 14 might be authorized to perform by the administrative authorities.

275. In addition, members wished to know whether the remedies of amparo and habeas corpus continued to be applicable during a state of emergency and whether representatives of the Public Prosecutor's Department remained available to detainees in such circumstances; what measures had been taken to disseminate information on the rights recognized in the Covenant and on the Optional Protocol; whether human rights were taught to police officers and members of the armed forces; how contradictions between domestic legislation and the Covenant, if any, were resolved; and whether there was any provision providing for prohibition of discrimination based on colour, language, national origin or political opinion, which had been omitted in article 61 of the Constitution.

276. In his reply, the representative of the State party explained that the Covenant took priority over laws adopted under the Constitution and that individuals could invoke its provisions before the courts. A constitutional reform bill which intended to place the Covenant above the Organic and other laws was currently under consideration by the Congress. Although officials of the Public Prosecutor's Department often referred to the rights set forth in international human rights instruments, the courts were not accustomed to citing such instruments because they tended to assume that all human rights were adequately covered in the Constitution. Efforts had been made to disseminate information on the rights recognized in the Covenant through lectures and seminars given to lawyers and judges as well as security and police officers.

277. The declaration of a state of emergency in February 1989 had been in conformity with article 4 of the Covenant. The rights set forth in articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant had not been suspended during that period and people had continued to exercise the right of amparo. The Commander of the National Guard had been urged to be vigilant to prevent excesses and human rights abuses and public officials had been instructed to keep within the limits set by the Constitution. The Public Prosecutor's Department had carried out many inspections at the headquarters of the military police and investigatory services. All complaints about disappearances, arbitrary detention and other human rights violations had been processed and handed over to the competent courts for further investigation. The Attorney-General of the Republic had met with representatives of non-governmental organizations and, subsequently, weekly meetings among the parties had been convened to give effective follow-up to all complaints of human rights violations. Eighteen complaints of disappearances had been registered, but only two had been confirmed through investigation. Although every effort had been made to carry out thorough inquiries, in many cases there was not enough proof to permit responsibility to be attributed to a particular individual, which was a prerequisite for prosecution. However, when well-founded indications of responsibility on the part of public officials had been uncovered, investigations had been requested and some cases had subsequently been brought to court.

278. During the suspension of rights and guarantees following the events of 4 February 1992, the Supreme Court had granted a request for amparo without undertaking a prior investigation of its admissibility. It had thus established a precedent for handling an application for amparo during a state of emergency

and the obligation of the courts to decide on the substance of the matter had, subsequently, been made part of the jurisprudence of Venezuela.

279. Responding to other questions, the representative said that the adoption of amendments to the Civil Code and the Labour Code had already led to considerable progress and had improved the situation of married women. The Public Prosecutor's Office enjoyed widespread support in its efforts to promote the rights of women in accordance with the Convention on the Elimination of All Forms of Discrimination against Women. There were five women members of the Government, 5 senators and 19 deputies. However, while there were many women in official positions, much remained to be done to achieve equality. There were no problems of discrimination based on race or religion or national origin in Venezuela.

280. Venezuela had ratified the Minimum Wage Convention, 1973 (No. 138) of the International Labour Organization and other international instruments specifically designed to protect children, including the Convention on the Rights of the Child. The National Institute for Minors was responsible for the protection of children and the Organic Labour Law, which entered into force on 1 May 1991, contained a chapter devoted to child labour whose purpose was to prohibit work by children under the age of 14, except for light work by those over the age of 12.

Right to life, treatment of prisoners and other detainees, liberty and security of person and right to a fair trial

281. With reference to those issues, the Committee wished to know what measures had been taken to prevent and punish the trafficking in organs; whether the Police Organization Bill mentioned in paragraph 125 of the report had been adopted; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what the status, functions and activities were of the new security units referred to in paragraph 69 of the report; what concrete measures had been taken by the authorities to ensure that all courts give due attention to cases of ill-treatment at the hands of the police and security forces and to ensure that such cases were investigated; what legal provisions guaranteed that no one was subjected to medical and scientific experimentation; what specific measures were envisaged to address the problems affecting the supervision of places of detention and the procedures for receiving and investigating complaints; whether the provisions of the Vagrancy Act relating to the custody of vagrants and malefactors in re-education centres, farming-settlements or work-camps were compatible with articles 8 and 14 of the Covenant; whether that Act had as yet been repealed; what concrete measures had been taken by the Public Prosecutor's Department to ensure strict adherence by the police and security forces to rules relating to the liberty and security of the person as enshrined in article 9 of the Covenant, and whether such initiatives had led to any progress to date; and whether the Legal Defence Bill referred to in paragraph 251 of the report had been adopted by Congress.

282. In addition, clarification was requested concerning measures taken by the authorities with regard to the numerous allegations of impunity enjoyed by members of the armed forces responsible for torture, maltreatment and disappearance; the steps undertaken to provide victims with effective remedies against such acts; of the position of the Government regarding the discovery of more than 60 bodies in common graves and, in particular, as to whether it intended to conduct an appropriate investigation into the atrocities committed; the alleged transfer of detainees to inaccessible rehabilitation centres, where they were deprived of their right to prepare their defence with their lawyers;

and the lack of resources and expertise to determine whether an individual had been subjected to torture that left no external traces. Members also asked whether military courts could handle cases involving civilian victims; how soon after arrest a person could contact a lawyer and inform his family; and whether environmental questions were taken into account in connection with the right to life.

283. In his reply, the representative of the State party explained that under article 46 of the Venezuelan Constitution, any act by the public authorities which infringed or restricted the rights guaranteed by the Constitution was null and void, and the officials who had ordered or carried it out bore criminal, civil or administrative liability. Article 1196 of the Civil Code provided that a judge could grant compensation to the victim in the event of bodily injury, damage to the honour and reputation of the victim or his family or violation of his rights. The Human Rights Division of the Public Prosecutor's Department had, during 1991, deemed it necessary in 2,500 cases to investigate the conduct of certain officials belonging to the police or prison services; 800 of those cases had been found to justify the formulation of charges against government officials. Referring to instances of impunity following the events of February 1989, the representative said that the courts had been urged to order corpses to be exhumed with a view to acquiring evidence in response to the concerns expressed by the relatives of victims. Due to difficulties in assigning individual responsibility, insufficient information on the location of the common graves, and other technical problems, no results had been achieved as yet.

284. The Police Organization Bill mentioned in the report had not yet been adopted. The use of firearms by the police and security forces was governed by the Penal Code and article 24 of the Law on Weapons and Explosives. The arbitrary or abusive use of force or firearms by law enforcement officials was considered to be an offence.

285. According to the Supreme Court, military jurisdiction was to be viewed as the exception and cases should generally be handled in the civilian courts. However, after the events of February 1989, the police investigatory bodies had collected evidence on civilian deaths and had reported thereon to the military courts. The Public Prosecutor's Department had informed them that such conduct was inappropriate and had reminded them that they were auxiliary bodies of the regular system for criminal justice and not of the military courts.

286. The Public Prosecutor's Department was responsible for ensuring against arbitrary or incommunicado detention and that the accused could communicate with a lawyer. Surprise visits to police pre-trial detention centres had been made at night by representatives of the Public Prosecutor's Department in the Caracas metropolitan area. A comparison of the results of that operation with a similar one carried out in 1990 had revealed that the number of arbitrary detentions had declined. In 1991, representatives of the Public Prosecutor's Department had inspected a total of 10,428 pre-trial detention establishments of various kinds. The Public Prosecutor's Department was entitled to visit places of detention in military units but it was rarely possible to organize such visits on a surprise basis and, under a state of emergency, access to military detention centres became even harder. The length of pre-trial detention was much too long and was likely to open the door to abuses and arbitrary action. Steps were being taken to reform the entire judicial system and to introduce a new court consisting of justices of the peace to relieve the judges of courts of first instance of their enormous workload. The Judicature Council had also appointed itinerant judges to try cases in courts where magistrates were overwhelmed with work.

287. Trafficking in organs was covered by the Organ Transplants and Anatomical Material of Human Origin Act. Under that Act, human organs could be removed and used for therapeutic purposes only at institutes and hospital centres authorized to do so. Persons who, for profit, acted as intermediaries in obtaining organs were punishable by four to eight years' imprisonment. Since traffic in organs was obviously connected with the sale of children, Venezuela had insisted on the inclusion, in the Convention on the Rights of the Child, of article 35 which obliged States parties to take all appropriate measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. Under the Medical Deontological Code, the consent of a person had to be obtained to perform medical experimentation.

288. The Vagrancy Act of 1956 had been promulgated before the adoption of the democratic Constitution in 1961 and violated the rights of individuals, particularly the right to legal counsel. The authorities agreed that the Act should be abolished and a new system for dealing with vagrants put into place. A draft law designed to achieve that end was being discussed in Parliament. A special office within the Public Prosecutor's Department sought to minimize the arbitrary application of the law and to have administrative acts revoked where they covered cases involving irregularities.

289. Responding to other questions, the representative of the State party said the Legal Defence Bill referred to in the report had not yet been adopted by Congress. If an accused did not have the means to pay a lawyer of his choice, he was provided with legal defence services from the moment he was charged. The *Asociación nacional de clínica jurídica* also provided legal defence services free of charge, mainly in low-income areas. Three public prosecutors were qualified to act in environmental matters and an Organic Law on the Environment had been adopted.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

290. In connection with those issues, the Committee wished to receive further information on the penalty of banishment, as provided for by articles 53 to 56 of the Criminal Code and the Act on the Commutation of Sentences by Pardon or Banishment from the National Territory of 15 December 1964, and on the compatibility of those provisions with article 12 of the Covenant; on the content of the Protection of Privacy Bill, referred to in paragraph 309 of the report; and on whether the Demonstrations, Marches and Other Peaceful Protest Activities Act and the Crowd Control Act had been adopted and, if so, whether they have been successful in fighting excesses committed by security forces against peaceful gatherings.

291. Members of the Committee also inquired about the grounds for deprivation of a person's right to vote; whether a conscientious objector could bring an action of *amparo* in order to protect his freedom of thought and conscience; and about the implementation of article 20 of the Covenant.

292. In his reply, the representative of the State party said that the penalty of banishment was ordered by the courts only when requested by the citizen himself and involved the commutation of a sentence already handed down by the competent judicial authorities. It was considered to be a benefit in that it offered the citizen freedom of movement as long as he remained outside the national territory and was, therefore, fully compatible with the Covenant. The purpose of the Protection of Privacy Bill was to protect the privacy, confidentiality, inviolability and secrecy of communications between individuals. It provided for penalties in connection with the recording or

hampering of such communications. The Bill had, however, not yet been endorsed by the Congress as a whole. The Demonstrations, Marches and Other Peaceful Protest Activities Act and the Crowd Control Act were still being considered in Congress. Steps had, however, already been taken to avert excesses by the security forces during peaceful demonstrations, such as the creation of special units among the ranks of the demonstrators themselves to prevent violence.

293. In response to other questions, the representative of the State party said that there was no history of conscientious objection in Venezuela. The Government was, however, studying the possibility of changing the law to provide an alternative to military service. There were numerous categories of persons who were exempt from military service, such as students, persons with dependant parents and Jehovah's Witnesses. Only prisoners incarcerated under the category of presidio (rigorous imprisonment) lost their right to vote.

Rights of persons belonging to minorities

294. With regard to that issue, the Committee wished to know what factors and difficulties affected the implementation of article 27 of the Covenant, particularly with regard to the treatment of indigenous peoples as individuals and groups; whether the Draft Act on the Organization of Indigenous Communities, Peoples and Cultures had been adopted by Congress; whether the delegation to Catholic missions of the task of "subduing and civilizing indigenous persons" was compatible with the rights of Indian communities as envisaged in the Draft Act as well as with article 27 of the Covenant; and whether article 77 of the Constitution had been reformulated to include specific recognition of the land, traditions, religions and languages of Indian communities in Venezuela, pursuant to the advice given by the Bicameral Commission referred to in paragraph 470 of the report.

295. In addition, members of the Committee wished to know how the State ensured that the indigenous populations were able to exercise their political rights and seek representation; whether any indigenous person had ever held one of the high public offices mentioned in paragraph 450 of the report; and, in general, how equitable access of members of indigenous groups to public service was ensured.

296. In his reply, the representative of the State party explained that a special office had been created at the national level to deal with indigenous matters. The Draft Act on the Organization of Indigenous Communities, Peoples and Cultures had not yet been adopted. The word "subduing" (reducir) used in the report referred to a system by which the Indians were exempt from complying with some of the elements of the administrative and judicial system in Venezuela. The purpose of those exceptions was to enable the Indians to live in conformity with the aspects of their culture that did not coincide with the cultural patterns of other inhabitants of Venezuela. In the Missions Act of 1915, the State of Venezuela had delegated to the Catholic Church the task of "civilizing" the Indians and persuading them to live in established settlements. A bill was, however, under consideration in Congress designed to amend article 77 of the Constitution with regard to the incorporation of indigenous populations into the life of the nation. It purported to modify the integrationist philosophy underlying that article by providing for a pluralist and multicultural vision based on respect for their languages and beliefs. A biosphere zone in the Amazons, covering an area of 3.9 million hectares, had been established to ensure the physical and cultural survival of the indigenous people.

Concluding observations by individual members

297. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for responding to the various questions. The report contained detailed information on laws and regulations, but fuller information could have been provided on the practices relating to the implementation of the Covenant. They noted with appreciation that the report highlighted factors and difficulties which had impeded the implementation of the Covenant in Venezuela during the period under review. Members welcomed the fact that democracy was thriving in Venezuela and that a great many laws and regulations dealing with human rights had been adopted or submitted to Parliament in recent years.

298. At the same time, it was noted that some of the Committee's concerns had not been fully allayed. Members expressed concern, in particular, at the serious human rights violations such as disappearances, torture, extrajudicial executions and arbitrary arrests that had been committed during the states of emergency in February 1989 and early 1992. They were further disturbed by the failure to take sufficient steps to punish those found guilty of such violations. Additionally, concern was expressed in respect of the excessively long periods of pre-trial detention; the application of article 35 of the Aliens Act; the conditions of detention in prisons; the trial of civilians by military courts; and over the Government's desire to integrate indigenous groups, which might conflict with their right under article 27 of the Covenant to enjoy their own culture.

299. The representative of the State party assured members of the Committee that their comments would be transmitted to his Government, particularly in so far as the need to carry out further investigations into the events of February 1989 was concerned.

300. In concluding the consideration of the second periodic report of Venezuela, the Chairman expressed his sincere appreciation to the delegation for its frank and cordial dialogue with the Committee and for the excellent report, which had followed the Committee's guidelines. He expressed the hope that the competent authorities would take action that would enable further progress to be reported in the third periodic report.

Comments of the Committee

301. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

302. The Committee commends the State party on its report, drawn up in accordance with the Committee's guidelines (CCPR/C/20/Rev.1). The report contains detailed information on the law, although fuller information could have been provided on practice relating to the implementation of the Covenant. Furthermore, it highlights factors and difficulties which impeded the implementation of the Covenant in Venezuela during the period covered by the report. The Committee, does, however, regret that the report was submitted more than seven years behind schedule.

303. The Committee also thanks the State party for the core document (HRI/CORE/1/Add.3), drawn up in accordance with the consolidated guidelines for the initial part of States party reports to be submitted under the various international human rights instruments (HRI/1991/1).

304. The Committee pays tribute to the competence of the delegation from the State arty, which endeavoured to reply frankly and fully to the many questions raised by Committee members.

Positive aspects

305. The Committee welcomes the fact that democracy is thriving in Venezuela and notes with satisfaction the adoption by or submission to Parliament in recent years of a great many laws and regulations dealing with human rights. These include important texts dealing with, for example, the protection of indigenous peoples and equality between men and women. The Committee takes note of provisions granting international human rights instruments precedence over Venezuelan domestic law.

Factors and difficulties impeding the implementation of the Covenant

306. The Committee notes that a number of states of emergency, resulting from riots caused by economic reforms, have been declared in the past in Venezuela, the most recent extending from 4 February to 30 April 1992. Emergency measures notified to the Secretary-General have suspended a number of the safeguards called for in the Covenant, and impeded the full implementation of the Covenant during those periods. The Committee also notes that outdated legislation which is still in force despite being severely criticized in Venezuela is one of the factors impeding the full and complete implementation of the Covenant.

Principal subjects of concern

307. The Committee expresses concern at the serious human rights violations, such as enforced and involuntary disappearances, torture and extrajudicial executions, that were committed during the attempted *coup d'état* in 1989 and early 1992. It is disturbed by the failure to take sufficient steps to punish those guilty of such violations, and concerned that members of the police force and the security services and military personnel are likely to go unpunished as a result. It notes that judicial investigations into such cases have clearly been too slow, especially where members of the armed forces are concerned.

308. The Committee is also concerned that custody can last as long as 16 days and emphasizes that it is precisely during such periods that accused persons are most vulnerable, in particular to acts of torture or ill-treatment. The possibility that civilians may be tried by military courts is likewise a matter of concern to the Committee.

309. The Committee also expresses its concern over the application of article 35 of the Aliens Act, which does not provide for any possibility of appeal, and over conditions of detention in places of imprisonment.

Suggestions and recommendations

310. The Committee recommends the State party to take whatever steps are necessary to combat all human rights violations, in particular those that may have been committed during the various states of emergency. The State party should see to it that all members of the armed forces of the police who have committed violations of the rights guaranteed by the Covenant are tried and punished by civilian courts. The duration of custody should be reviewed, and an accused person should be allowed to undergo a medical examination upon request and to have access to his lawyer from the time of arrest. Steps should also be taken to make the remedy of *amparo* effective, and to improve conditions in places of detention substantially. The list of rights that cannot be derogated from, even during states of emergency, should be extended to include all the

rights covered by article 4, paragraph 2, of the Covenant. Further measures should be taken pursuant to article 27 of the Covenant, in order to guarantee indigenous peoples their own cultural life and the use of their own language. Lastly, a special effort should be made to support the activities of the Human Rights Office. The Committee also recommends that training courses should be organized for members of the police, the armed forces and the security forces as well as for other law enforcement officials, so as to better acquaint them with basic human rights principles and norms.

Republic of Bosnia and Herzegovina

311. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the Covenant, having noted that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant, finding that the new States within the boundaries of the former Yugoslavia succeeded to the obligations of the former Yugoslavia under the Covenant, in so far as their respective territories were concerned, and acting under article 40, paragraph 1 (b), of the Covenant, on 7 October 1992 the Committee requested the Government of the Republic of Bosnia and Herzegovina to submit a short report on certain issues in respect of persons and events now coming under its jurisdiction (for the Committee's decision, see para. 36 and annex VII).

312. The report submitted by the Government of the Republic of Bosnia and Herzegovina pursuant to this decision was considered by the Committee at its 1200th meeting, on 3 November 1992 (see CCPR/C/SR.1200). (For the membership of the delegation, see annex XI.)

313. The report was introduced by the representative of the State party, who said that terrible crimes were being committed in the territory of Bosnia and Herzegovina that was controlled by the aggressor (Serbia, the Serbian Democratic Party and its armed formations), for which ethnic cleansing was an integral part of the war objectives. The Serbian Democratic Party's policy was based on the principle that persons of different religions and ethnic origins could not live side by side, and the concept of ethnic cleansing was a corollary of that concept. For example, in the territory controlled by the aggressor, mass executions and arrests were taking place, hundreds of thousands of people were being deported or interned in concentration camps and detention centres, and the right of individuals to work, freedom of movement and property were being denied. So far, 165,000 persons had lost their lives, in some cases almost the entire population of an area. Moreover, 1,200 members of the Jewish community in Sarajevo had been compelled to flee without hope of ever coming back.

314. The Government of the Republic of Bosnia and Herzegovina opposed an ethnic war and had taken a number of steps to determine the circumstances in which a large part of the population of two regions, one with a Serbian majority and the other consisting mainly of Muslims, had fled. In actual fact, 600,000 Muslim citizens had been forced to abandon their homes in various regions of Bosnia and Herzegovina. In some places, virtually the entire population had been forced to leave. Yet the Bosnian State was a State for all those who lived in its territory and it comprised peoples who had fused to the point of forming an indivisible entity. It had done everything in its power to prevent ethnic cleansing in the territory under its control. Ethnic war was therefore something that had been imported into Bosnia and Herzegovina and was caused by the ambitions of neighbouring States seeking to annex part of the territory and population of the country.

315. Bosnia and Herzegovina had neither its own army nor its own weapons; the population had therefore organized spontaneously to defend their country and

stand up to aggression. The situation had given rise to some cases of torture and arbitrary executions by way of reprisals for the mass and arbitrary executions and the torture for which the Serbs were responsible. Steps had been taken to put an end to such actions, such as dismissing certain officers and disbanding local self-defence units whose reprehensible behaviour was notorious. The Bosnian authorities undertook to establish high-level commissions of inquiry and were continuing to defend the principle of the communities living alongside each other.

316. The members of the Committee noted that, in submitting the report requested and sending a delegation, the Republic of Bosnia and Herzegovina had shown, so far as its territory was concerned, that it had succeeded to the former Socialist Federal Republic of Yugoslavia's obligations under the Covenant. On the basis of the two reports by the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/S-1/9 and E/CN.4/1992/S-1/10), the report of the Mission of the Conference on Security and Cooperation in Europe to Bosnia and Herzegovina in August 1992 and other reports on the situation in certain camps, they deplored the unprecedented tragedy that the country was suffering. They expressed their consternation at the extent of the violations of the rules of humanitarian law in general, the Geneva Conventions of 12 August 1949 for the protection of war victims and the Covenant. They noted that the situation in the camps under the control of the authorities of Bosnia and Herzegovina were better than in the other camps and that no policy comparable to a policy of ethnic cleansing was being applied in the territory under the control of the Bosnian authorities.

317. The members of the Committee asked what steps had been taken to protect the rights enunciated in the Covenant, in particular the rights to life, to protection against torture and other ill-treatment, to liberty and to freedom of movement. In the case of persons deprived of their freedom as a result of the conflict, they asked for clarification about the conditions in certain detention centres, particularly those at Konjic and Zenica and any other private detention centres around Sarajevo; the situation in two villages in Bosnia and Herzegovina where the population was said to be unable to leave; the results of inquiries conducted into the question of extrajudicial executions and cases of torture; the steps taken so that the abuses noted in the latter centres would not recur; the measures to identify detainees and to exchange information about them; the registers of detainees and any transfers; and the number of people held by the Bosnian authorities. They also asked whether the International Committee of the Red Cross had been kept fully informed of the number of detainees; whether the places of detention had all been declared as such and could be visited; and whether instructions had been issued so that persons not bearing arms would not be arrested simply in order to exchange them against Muslims held by the opposing forces.

318. In response to the questions raised, the representative of the State party said that, as the Special Rapporteur of the Commission on Human Rights had pointed out, there was no comparison between the human rights violations in the territory legally controlled by the Government and the crimes committed in the part of the territory that was temporarily occupied. In the war conditions forced upon the country, human rights violations were inevitable and cases of disappearances, ill-treatment inflicted on detainees in certain prisons or camps, arbitrary arrest and detention without trial had been noted. In the circumstances, steps had been taken by the Government and, from now on, any arrest other than by order of the police was forbidden and the powers of the military police were reduced. Furthermore, military prisons were now solely for members of the army found guilty of offences and no civilian could be imprisoned in them. Maintenance of public order was exclusively the responsibility of the civilian police and judicial bodies. The Government was endeavouring to seek

out and punish persons responsible for illegal acts and, to that end, a Committee of Inquiry had been established to find those responsible for crimes committed, regardless of whether they were Muslims, Croats, Serbs or partisans of any political faction. Another Special Committee had been instructed to examine complaints of acts committed by the military authorities, namely arbitrary arrests and detentions and violations of the right to property, to freedom of movement and to work. The Bosnian authorities in no way acted as Muslim authorities and the victims, in the territory under their control, although generally Muslim, also belonged to other ethnic groups or religions.

319. Nevertheless, steps to restore respect for the law were hindered in the Sarajevo region because it was subjected to constant bombardments and because of the lack of water, electricity, fuel, food, medicines and means of communication. It was therefore difficult to set up an appropriate mechanism for the protection of human rights. It was to be noted that in the regions which had least suffered from enemy infiltration, public order was being maintained and no violence had been found in the detention camps. Citizens of Serbian origin who had felt that they were threatened had benefited from special protection measures. Furthermore, the Government regarded itself as legally responsible for the population living in the occupied part of the territory and was conducting investigations so that victims would once again enjoy their rights and be compensated in so far as possible, although the task was extremely difficult without the support of the international community.

320. The Government of Bosnia and Herzegovina had been patient and shown good will by negotiating a political agreement in Geneva that could lead to a cease-fire. It had undertaken to respect all international humanitarian law instruments, particularly the Geneva Conventions which provided for the release of persons detained in the "camps". In that regard, the participants in the London Conference had recognized that besieged towns and villages could no doubt be regarded as concentration camps. Over 400,000 persons were being detained in what could be regarded as the largest concentration camp ever to exist in the world and the situation was growing worse from month to month, without the international community displaying any intention of coming to the assistance of the inhabitants of Sarajevo. The representatives of the international community, and in particular delegates of the International Committee of the Red Cross, had been invited to visit detention camps and prisons under Bosnian jurisdiction. Shortly after the agreement of 1 October 1992 to open up the camps, the Government had respected its commitments. However, the aggressor had continued its policy of ethnic cleansing by preventing released persons from returning to their homes or villages of origin, by threatening their security, by pressuring them to emigrate to Croatia and by using force to move them there.

Concluding observations by individual members

321. The members of the Committee noted that, while the report did not methodically and systematically answer the questions included in the Committee's decision, the delegation of the Republic of Bosnia and Herzegovina had answered them orally. They noted that the Republic of Bosnia and Herzegovina considered itself as legally responsible for everything which had happened, not only in the part of the territory effectively under its control but also in the other parts. They also noted the steps taken to combat and prevent human rights violations committed by the forces placed under the control of Government in a conflict which had been imposed on it.

322. The members of the Committee said they were revolted by the crimes committed by the forces not under the control of the Government. In that connection, it was pointed out that ethnic cleansing was a form of genocide and was accompanied by massive violations of articles 6, 7, 12 and 26 of the

Covenant. They also said that all places of detention should be officially declared as such, that a list of all detainees should be drawn up and published and that ICRC should be able to visit those camps. Camps not complying with those requirements should be dismantled.

323. The representative of the Republic of Bosnia and Herzegovina assured members of the Committee that his country was making every effort to bring the conflict to an end and to honour its obligations and guarantee respect for everyone's human rights. A draft Constitution guaranteeing protection of all the human rights set out in the international human rights instruments had been elaborated.

324. On completion of the consideration of the report submitted by the Republic of Bosnia and Herzegovina pursuant to the Committee's decision of 6 October 1992, the Chairman thanked the delegation for the useful information it had supplied in response to the questions raised. He expressed the hope that the current negotiations would lead to a radical change in the situation and that all those who lived in the Republic of Bosnia and Herzegovina would soon be able to enjoy the rights protected by the Covenant.

Comments of the Committee

325. At its 1205th meeting (forty-sixth session), held on 6 November 1992, the Committee adopted the following comments.

Introduction

326. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the international Covenant on Civil and Political Rights; noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant; and acting under article 40, paragraph 1 (b) of the Covenant; the Committee on 7 October 1992, requested the Government of the Republic of Bosnia and Herzegovina to submit a short report on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the Covenant;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant.

327. Pursuant to that request, the Government of Bosnia and Herzegovina submitted a background paper dated August 1992 on the violations of human rights that had occurred in the territory of the Republic, which was considered by the Committee at its 1200th meeting, held on 3 November 1992. The Republic of Bosnia and Herzegovina was represented by Mr. Muhamed Filipovic, Vice-President of the Academy of Science and Art of the Republic of Bosnia and Herzegovina, Member of the Assembly of the Republic of Bosnia and Herzegovina, Member of the State Delegation of the Republic of Bosnia and Herzegovina at the International

Conference on the Former Yugoslavia; Mr. Kasim Trnka, Member of the Constitutional Court of the Republic of Bosnia and Herzegovina, Member of the State Delegation of the Republic of Bosnia and Herzegovina at the International Conference on the Former Yugoslavia and Mr. Mustafa Bijedic, Minister Counsellor, Chargé d'affaires, Mission of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva. The document submitted was supplemented orally in detail and in depth in the perspective of the particular areas of concern on which the Committee had requested a report.

328. The Committee notes that by complying with its request to submit a report and by sending a delegation before it, the Republic of Bosnia and Herzegovina had confirmed its succession to the obligations undertaken under the International Covenant on Civil and Political Rights by the former Socialist Federal Republic of Yugoslavia in respect of the territory forming part of the Republic of Bosnia and Herzegovina.

Positive aspects

329. The Committee welcomed the delegation's affirmation that the Republic of Bosnia and Herzegovina considers itself legally responsible for whatever has taken place not only in that part of its territory on which it has factual and effective control but also in other parts of its territory. The Committee has also taken note of the measures taken to combat and prevent violations of human rights, in particular, measures to ensure that arrest and detention of persons are carried out only by the legal authorities and not by uncontrolled individuals; the demarcation of legal responsibility between the military and civilian police authorities; the replacement of commanders who have been responsible for violations; and the disbanding of groups and units which have been responsible for violations. The Committee has also taken note of the measures taken to protect the person and property of Serbs.

Factors and difficulties impeding the application of the Covenant

330. Since Bosnia and Herzegovina became a separate State, a significant part of its territory has remained out of its control and has been subjected to military action entailing massive human rights violations resulting in loss of life, torture, disappearances, summary executions, rapes and general ill-treatment of persons. The delegation stated that much of this was the result of the action of outside forces and uncontrolled groups and individuals.

Principal subjects of concern

331. The Committee expressed its concern at the large number of killings, arbitrary arrests, detentions, the operation of prisons by private persons and the general mistreatment of persons.

Recommendations

332. The Committee recommends that the Republic of Bosnia and Herzegovina formalize its succession to the Covenant by submitting the appropriate notification to the Secretary-General of the United Nations. The Committee recommends that the measures already taken by the Republic should be further intensified and systematically monitored so as to ensure that ethnic cleansing does not take place, whether as a matter of revenge or otherwise; that prisoners are not taken for the purpose of eventual exchange of prisoners; that all places of detention are officially proclaimed; that records of all people detained are kept and made public; and that such places of detention are open to visits by the International Committee of the Red Cross and the families of the people detained. All places of detention that do not comply with these conditions

should be immediately dismantled. Administrative arrangements should be made to enable persons to retrace members of their family who have disappeared and prompt investigations should take place to bring all those responsible for violations to trial.

Croatia

333. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the Covenant, having noted that all the peoples within the territory of the former Yugoslavia were entitled to the guarantees of the Covenant, finding that the new States within the boundaries of the former Yugoslavia succeeded to the obligations of the former Yugoslavia under the Covenant in so far as their respective territories were concerned, and acting under article 40, paragraph 1 (b), of the Covenant, on 9 October 1992, the Committee requested the Government of the Republic of Croatia to submit a short report on certain issues in respect of persons and events now coming under its jurisdiction by 30 October 1992 (see para. 36 and annex VII).

334. The report submitted by the Republic of Croatia pursuant to the aforementioned decision was considered by the Committee at its 1201st and 1202nd meetings, on 4 November 1992 (CCPR/C/SR.1201 and 1202). (For the composition of the delegation, see annex XI.)

335. The report was introduced by the representative of the State party who explained that any consideration of the situation in Croatia had to be based on a distinction between the aggressor and the victim and take duly into account the background against which the development and present status of human rights in Croatia had evolved. The first free elections in the spring of 1991 and Croatia's declaration of independence in June 1991 had led to riots and rebellion by a part of the Serbian minority in Croatia with the incitement and strong support of the regime in Belgrade and of the so-called Yugoslav People's Army. Those events culminated in open military aggression against Croatia aiming at occupation, ethnic cleansing and annexation of its territory. That aggression had left 20,000 people dead and 80,000 wounded.

336. A quarter of the Croatian territory was still under Serbian occupation. Almost half of the Croatian economy had been destroyed and many churches, cemeteries, schools, hospitals and historical monuments severely damaged or completely ruined. Additionally, Croatia had become host to some 300,000 displaced persons and to more than 450,000 refugees from Bosnia and Herzegovina.

337. As one of the successor States to the former Yugoslavia in 1992, Croatia had made a declaration of succession to the Geneva Conventions of 1949 and the Covenant. It also intended to make the declaration provided for in article 41 of the Covenant and to accede to the Optional Protocols in the near future. The Covenants had been taken as a basis for the human rights provisions contained in chapters 2 and 3 of Croatia's new Constitution. The Constitution defined the Republic of Croatia as a national State of the Croatian people and a State of members of minorities who were its citizens; its article 15 provided that members of all national minorities enjoyed equal rights, freedom to express their nationality and use their language and script, and cultural autonomy. Croatia had also been the only Republic of the former Yugoslavia to enact and implement the human rights provisions adopted by The Hague Conference on the Former Yugoslavia. Accordingly, it had adopted, in December 1991, a Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities which guaranteed all human rights and fundamental freedoms to members of minorities, together with additional rights to be enjoyed by them in accordance with all the relevant United Nations and European human rights instruments. Special autonomous status had been granted to national and ethnic communities in those districts of Croatia where their members represented over 50 per cent of the population. Other legal provisions guaranteeing national minority rights had also been adopted, in particular the

Law on Election to the Croatian Parliament which provided that a national minority comprising more than 8 per cent of the population of the Republic had to be proportionally represented in parliamentary, governmental and judicial bodies.

338. There had been no organized policy of ethnic cleansing in the Croatian territory under the control of the Croatian authorities, who had always been decisively and uncompromisingly opposed to such a policy. Although there had been individual cases of arbitrary arrests and killings during the early stages of spontaneous self-defence against the aggressor, the Croatian authorities had applied the rule of law throughout the territory under their control and were prosecuting the perpetrators of such criminal acts. There were no detention camps in the territory controlled by the Croatian authorities and, even during the military aggression, the treatment of prisoners of war belonging to the so-called Yugoslav People's Army or to Serbian paramilitary groups had been regulated by a special decree providing for the application of the Geneva Conventions of 1949. The policy of ethnic cleansing was, however, still being pursued and practised against Croatians and other non-Serbian populations in the territory not controlled by the Croatian authorities. In that territory, there were still detention camps in which killings, the worst methods of torture and other inhuman treatment were practised.

339. The Croatian Government was a strong advocate of national and religious tolerance and favoured the introduction of preventive measures to forestall acts of intolerance. It had established an Office for Inter-Ethnic Relations and there was also a parliamentary Committee for Human Rights, including minority rights. Police stations in each district had been instructed to take the necessary precautions to prevent possible attacks in retaliation for the killings, bombings and other crimes frequently committed by people of Serbian nationality living in the area.

340. Members of the Committee noted with appreciation that, on 12 October 1992, the Republic of Croatia had notified the Secretary-General that it had succeeded, as from 8 October 1991, to various human rights treaties, including the Covenant. They further noted that, since its independence, the territory of Croatia had been subjected to large-scale military action which had resulted in massive violations of human rights, including significant loss of life, torture, disappearances and summary executions, with entire towns destroyed and populations displaced. They emphasized, however, that all human rights instruments, including the Geneva Conventions, laid obligations on parties, without exonerating those who regarded themselves as victims of aggression from their own responsibilities under the relevant instruments. Although human rights violations might well be reported in portions of the country that was not under Croatian control, Croatia was none the less accountable for what happened in areas that it did control.

341. With regard to the situation of ethnic Serbs in Croatia, members requested clarification of references in the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/S-1/9) to maltreatment of ethnic Serbs, which had caused the flight of many of them from the territory of Croatia, and to cases of detention of civilians on the sole basis of their ethnic origin. Similarly, clarification was sought of other references in a report prepared by the Conference on Security and Cooperation in Europe which indicated that the Serbian population had been the target of human rights violations, including destruction of houses, attacks on shops belonging to Serbs, and dismissal of Serbs from government service. It was asked whether such measures did not in themselves constitute a form of ethnic cleansing. Information was also requested on measures taken to investigate the cases of kidnapping and arbitrary arrests mentioned in the report submitted by Croatia and to punish those found

guilty. Members also wished to know what measures had been taken to investigate cases of disappearances, extrajudicial executions or torture, to punish those found guilty, and to prevent the recurrence of such acts, including any acts perpetrated by Croatian forces in Bosnia and Herzegovina; whether steps had been taken to ensure that prisoners were not being taken in order to be exchanged for other prisoners; what measures had been adopted to ensure the proper treatment of persons deprived of their liberty and to prevent conduct by certain individuals that might lead to forced departures or to preventing the return of any section of the population; whether there were detention camps in Bosnia and Herzegovina under the jurisdiction of members of the Croatian army; and what groups were considered as minorities under the recently adopted Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities.

342. With reference to the implementation of article 20 of the Covenant, clarification was requested of the published lists of Croatian citizens of Serbian origin indicating their ethnic origin which, according to the Special Rapporteur of the Commission on Human Rights, were widely distributed and available for sale to the public (members of the Committee had a copy of the list furnished by the Special Rapporteur). It was also inquired what measures had been foreseen to create the preventive conditions designed to forestall any cases of national, racial, religious or other kinds of hatred; what practical measures had been adopted to promote tolerance among the various peoples residing in the Republic; what steps had been taken against members of the Croatian army who had reportedly been seen wearing Nazi emblems; whether there were any educational programmes, policy campaigns or efforts to disseminate information that would promote ethnic tolerance; and what the Office for Inter-Ethnic Relations might do to promote the eradication of ethnic criteria in the future.

343. In his reply, the representative of the State party stated that in October 1992, his Government had notified the depositaries of many international treaties, including the Covenant, of its decision to consider itself a successor State in respect of the ratification of the former Federal Republic of Yugoslavia. Under article 134 of the Constitution, international agreements concluded and ratified in accordance with the Constitution were part of Croatia's internal order and prevailed over national legislation. With reference to the statement in the report according to which a distinction had to be drawn between the aggressor and the victims, the representative explained that all violations of human rights had constituted aggression and that, during the war in Croatia, part of the Serbian ethnic group had joined the aggressors and committed violations.

344. Referring to questions relating to ethnic groups and minorities, the representative explained that anyone who wished to be considered as belonging to a minority had the right to do so and enjoyed all the rights guaranteed under the Constitution. There was no wish on the part of the Government to change anything in respect of their geographical situation. Provisions relating to minorities had been included in the Constitutional Law of December 1991, but the application of those rules depended on a decision of the present rulers of the Serbian minority in one part of Croatia to recognize that they were citizens of Croatia. Serbs living in other parts of Croatia had recently received new schools, and a Serbian organization called the Serbian Community had been re-established to protect the national rights of Serbs in Croatia. The branches of the Office for Inter-Ethnic Relations which had been created in various districts of the country had established a council where all representatives of different ethnic groups and minorities could meet to present their problems. The branches also proposed measures for monitoring the application of laws and

regulations and assisted persons whose cases had not been dealt with properly by judicial or other organs.

345. With reference to the human rights violations occurring in Croatia, the representative explained that a distinction had to be made between the three quarters of the territory controlled by the Croatian Government, for which the Government was responsible, and the portion that was occupied by the Serbs and under the protection of the United Nations Protection Force (UNPROFOR), where it was not possible to control human rights violations. The activities of the Ministry of the Interior and of the police were aimed at preventing violence, especially of an ethnic nature, and protecting public and private buildings, in particular Serbian-owned homes, against possible attacks. The Croatian Government could, unfortunately, do nothing about violations in the part of the territory out of its control, where incidents of ethnic cleansing, expulsions, arbitrary arrests, executions, torture, and racial and religious hatred continued to occur. Furthermore, the Croatian Government could not be held responsible for violations in other independent sovereign States, in particular Bosnia and Herzegovina. There were no concentration camps in Croatia but, due to the war, Croatia did have three prisoner-of-war camps in its territory which were under the control of the Ministry of Defence. Rules for the treatment of the prisoners had been laid down in a decree of the President of the Republic and the provisions of the Geneva Conventions of 1949 were being applied.

346. In the framework of the spontaneous self-defence actions against Serbian and Montenegrin aggression, at a time when Croatia had been weaponless and without a military force, there had been some cases where the inhabitants of Serbian villages had been taken hostage. From 1 January to 31 August 1992, there had been 4,014 cases of destruction of homes in which the victims had been Serbs, 1,067 cases involving Croats and 115 cases involving members of other groups. Attacks on Serbian-owned shops, as reported by the mission of the Conference on Security and Cooperation in Europe, were against the policy of the Croatian Government. One such incident had been sparked off by the murder of a local policeman, who had been ambushed by Serbian terrorists. The Croatian Government was also conducting investigations into an incident in which members of the Croatian Democratic Union had allegedly written threatening letters to Serbian intellectuals, but it appeared that those allegations had not been substantiated. The list of acts of violence against Serbs reflected acts by individuals and not an official policy on the part of the Government. It could, however, not be assumed that a country emerging from Communist rule, having won its independence through an extremely violent armed conflict, would rapidly attain the highest degree of respect for human rights. Violations of human rights did exist in Croatia, but the Government was doing everything possible to see that the law was applied to punish those found responsible.

347. With regard to the implementation of article 14 of the Covenant, the representative explained that, at the beginning of the war against Croatia, the system of criminal justice had operated for several months under extremely difficult conditions. The police forces had been the only ones able to offer resistance to military action and, as a result, had been unable to perform their normal functions until 1 January 1992. Some 21,951 criminal offences connected with the war or armed conflict had been reported between August 1990 and July 1992. Other criminal offences classified as crimes against humanity and international law involved 1,880 persons. A total of 10,635 persons had been brought before ordinary courts, and a total of 6,829 members of the military had been brought before military courts. There had so far been 423 court judgements, 91 per cent resulting in convictions, for criminal offences in connection with the armed conflict.

348. Referring to questions raised under article 20 of the Covenant, the representative of the State party said that the extreme right-wing party and its military wing had been condemned by the Croatian Government, and the party leaders and three members of Parliament had had their immunity removed and were being investigated. The Public Prosecutor's Department had also requested the opening of an investigation into that party's activities, possibly leading to its dissolution. The political campaign for the August 1992 elections had placed strong emphasis on respect for human rights and especially the rights of minorities. The Croatian Parliament, furthermore, had recently adopted a law on the discontinuance of criminal proceedings instituted for offences committed during the armed conflict. This law, which does not apply to perpetrators of criminal acts, is one of the measures which the Croatian Parliament and Government have taken with a view to the reconciliation of the peoples of different nationalities who live in the territory of the Republic. Of the 42 reported crimes of incitement to national or religious intolerance or hatred under article 236 of the Penal Code, during the first nine months of 1992, 42 had led to the opening of a judicial investigation.

Concluding observations by individual members

349. The members of the Committee thanked the representative of the State party for replying clearly and in detail to the questions of the Committee. They noted a number of encouraging factors with regard to the guarantee of human rights, foremost among which was the declaration of succession to the various international human rights instruments. They also noted that the obligations deriving from those instruments were incorporated in the new Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities adopted in December 1991; that an Office for Inter-Ethnic Relations had been opened; that persons charged with crimes committed during the conflict had been brought to court; that the three prisoner-of-war camps in Croatia were open to the International Committee of the Red Cross; and that the paramilitary groups and the extreme right-wing political parties and their members were being investigated.

350. The members of the Committee indicated, however, their deep concern about the preamble to the Constitution, which stated that the Republic of Croatia was defined as the national State of the Croatian nation embracing members of other nations and minorities who were its citizens. They also indicated their concern about the discrimination and harassment incurred by persons of Serbian origin residing in Croatia, particularly in respect of the lists of individuals classified according to their ethnic origin; the wearing of Fascist emblems in public by certain military personnel; the dismissal of Serbs in the press agencies; the lack of energy shown by the authorities *vis-à-vis* the risks of an extension in their territory of the ethnic persecution referred to in the report of the Special Rapporteur of the Commission on Human Rights; cases of enforced or involuntary disappearances; the arbitrary detention of many people, often in order to exchange them for Croatian prisoners; the existence in Croatia of unreported places of detention; and the deplorable conditions of detention in internment camps placed under the control of the Croatian army or of local Croatian military groups in Bosnia and Herzegovina, in respect of which the responsibility of the Croatian Government was engaged.

351. The representative of the Republic of Croatia thanked the members of the Committee for their observations, questions and criticisms and stressed that the dialogue which had just taken place would help to strengthen the efforts being made by the competent authorities of his country to guarantee the respect and exercise of the civil and political rights established by the Covenant.

352. In conclusion, the Chairman thanked the Croatian delegation for its extremely helpful answers and comments which had demonstrated its willingness to cooperate with the Committee. He recalled that the responsibility devolving upon States parties to the Covenant encompassed not only the acts committed in the territory of the actual State, but also those acts carried out by its agents beyond national frontiers, as well as incitement to such acts. He also expressed the hope that the declaration of succession to the Covenant would be followed by accession to the two Optional Protocols to the Covenant.

Comments of the Committee

353. At its 1205th meeting (forty-sixth session), held on 6 November 1992, the Committee adopted the following comments.

Introduction

354. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the International Covenant on Civil and Political Rights; noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant; and acting under article 40, paragraph 1 (b), of the Covenant; the Committee, on 7 October 1992, requested the Government of the Republic of Croatia to submit a short report on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, in the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the Covenant;

(b) Measures taken to prevent arbitrary arrests and killings of persons as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant.

355. Pursuant to that request, Croatia submitted a short special report entitled "Report on measures taken to prevent criminal acts perpetrated in violation of the human rights and freedoms in the Republic of Croatia", which was considered by the Committee at its 1201st and 1202nd meetings, held on 4 November 1992. The Republic of Croatia was represented by Mr. Smiljan Simac, Assistant Minister of Foreign Affairs of the Republic of Croatia, Head of Delegation;
Mr. Budislav Vukas, Faculty of Law Zagreb, Member of Delegation;
Mr. Davor Krapac, Faculty of Law, Zagreb, Member of Delegation. The report was supplemented by an oral introduction by Mr. Simac, and by responses by various members of the delegation to the questions and observations of members of the Committee.

356. On 12 October 1992, the Republic of Croatia notified the Secretary-General of the United Nations that it had succeeded, as from 8 October 1991 (the date of its proclamation of independence), to various human rights treaties, including the International Covenant on Civil and Political Rights.

Positive aspects

357. Certain factors encouraging to the guaranteeing of human rights were noted. The Republic of Croatia had attained statehood after democratic parliamentary elections in 1990. The new Constitutional Law of Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities, adopted in December 1991 and amended in April 1992, incorporated United Nations treaty obligations on human rights. An office for inter-ethnic relations had been opened, which would have branches in various districts of Croatia and a wide-reaching mandate. The Croatian delegation confirmed that, in the view of the Government, the only proper use of ethnic identity was to ensure that ethnic minorities received the guarantees to which they are entitled under article 27 of the Covenant. It was also noted that certain charges had been brought in the courts against persons who were accused of crimes against civilians, crimes against prisoners of war and the crime of genocide. The three prisoner-of-war camps in Croatia were under the control of the Ministry of Defence and open to the International Committee of the Red Cross. The Government had condemned the policies of the ultra right paramilitaries and political parties and was conducting investigations into the activities of certain members of Parliament belonging to the Croatian Right Party.

Factors and difficulties impeding the application of the Covenant

358. Since its independence, the territory of the Republic of Croatia has been subjected to large-scale military action. This had resulted in massive violations of human rights, including significant loss of life, torture, disappearances and summary executions, with entire towns destroyed and populations displaced. Because of the conflict in neighbouring Bosnia and Herzegovina, Croatia had also received very large numbers of refugees.

359. The representatives also informed the Committee that Croatia controlled only about three quarters of its territory, the remainder being under the authority of UNPROFOR. The delegation conceded that there had been periods during the hostilities in its territory when public order had broken down and there had been an inability to control ethnically-based violence against Serbs. It accepted legal responsibility for those events.

Principal subjects of concern

360. The Committee was concerned with the preamble to the Constitution, whereby the Republic of Croatia is defined as "the national state of the Croat nation and a state of members of other nations and minorities". Concern was expressed about long-standing discrimination against, and harassment of, ethnic Serbs residing within Croatia. In particular, the circulation of lists of persons grouped on the basis of their ethnic origin was to be deplored. Purges had been permitted of the public services and the police had become identified with ultra right nationalism. Members of the military were often seen in public, including in Bosnia and Herzegovina, wearing Fascist emblems. Serbs had been removed from their jobs in the press and there had been widespread arrests and disappearances. Persons were being held in deplorable conditions in places of detention in Bosnia and Herzegovina, which were under the control of the Croatian army or local Croatian military factions who received the backing of the Republic of Croatia. The international responsibility of the Republic of Croatia was engaged in relation to these events.

361. The Committee believed that there were in Croatia undesignated places of detention where persons were held, often by private groups. Many persons for whom there was no legitimate cause of detention were unlawfully held. Sometimes

they were deprived of their liberty simply in order to be able to effect exchanges for Croatians held as prisoners elsewhere.

Recommendations

362. The Government of Croatia is urged to act vigorously against all manifestations of racial hatred. Public condemnation should be made of the circulation of lists of persons based on ethnicity and further appropriate action should be taken. Strong efforts should be made to identify undeclared places of detention and to ensure that only bona fide prisoners of war are held in properly notified camps operating in accordance with the Geneva Conventions of 1949 and the Covenant. Responsibility must be accepted for the acts of the military in other territories as well as in Croatia. Clear instructions should be issued to all military personnel as to their obligations under the Covenant. The foregoing had to be borne in mind in the context of support afforded, directly or indirectly, to local Croatian militia in Bosnia and Herzegovina. Those responsible for violations of human rights should be brought speedily before the courts. In that regard, the existing distinctions between military and civil jurisdictions should be reviewed so that military personnel might be tried and, if found guilty, punished under normal civil jurisdiction.

Federal Republic of Yugoslavia (Serbia and Montenegro)

363. Deeply concerned about recent events in the territory of the former Yugoslavia affecting human rights protected under the Covenant, having noted that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant, finding that the new States within the boundaries of the former Yugoslavia succeeded to the obligations of the former Yugoslavia under the Covenant, in so far as their respective territories were concerned, and acting under article 40, paragraph 1 (b), of the Covenant, the Committee, on 7 October 1992, requested the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit a brief report on certain issues in respect of persons and events now coming under its jurisdiction (see para. 36 and annex VII for the Committee's decision).

364. The report submitted by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to the aforementioned decision was considered by the Committee at its 1202nd meeting on 4 November 1992 (see CCPR/C/SR.1202 and Add.1). (For the composition of the delegation, see annex XI.)

365. The report was introduced by the representative of the State party, who said that both the Federal Government and a large part of public opinion in Yugoslavia were fully aware of the shortcomings in the observance and promotion of human rights. Those shortcomings were due to the fact that for almost half a century the country had been under an authoritarian regime. Various legislative amendments concerning crimes of opinion, freedom of association, freedom of the press and police powers had been adopted and a new Constitution had been promulgated. As soon as it had taken office on 15 July 1992, the present Government had set itself the task of transforming a "party-ruled State" into a State subject to the rule of law. It had formulated two important bills concerning the general amnesty for offences committed in connection with the conflict and the status of minorities.

366. Difficulties connected with the cumbersome nature of the State

human rights in the Federal Republic of Yugoslavia. The most serious consequence of that conflict was its repercussions on relations between the various ethnic groups and nationalities which, until recently, had coexisted without particular problems. Another consequence of the conflict had been the influx of 500,000 Serbian refugees from Croatia and Bosnia and Herzegovina or Muslim refugees. Some of those refugees had arrived with their weapons, intent on making a new home in the Republic, even if it meant using force in order to do so, at the expense of members of non-Serbian ethnic groups whom they regarded as their enemies. The media had played a very negative role in that connection by poisoning relations between ethnic groups, stirring up national and racial hatred. Since the beginning of the "Croat war" in the summer of 1991, paramilitary groups beyond the control of any official military authority had emerged. The new Government had disbanded those groups but they were continuing to act in secret, crossing into Bosnia and Herzegovina and committing serious violations of humanitarian law in that territory.

367. The policy of ethnic cleansing had never been practised in the territory of the Federal Republic of Yugoslavia. Attempts to do so had been made, notably in Vojvodina, by certain individuals or groups with the aim of forcing non-Serbs to leave their homes; the authorities had, however, reacted after being notified by the victims. Various measures had been taken by the authorities, including greater police supervision, the arrest and prosecution of persons accused of having violated the liberty and rights of persons of another nationality or having encouraged ethnic cleansing, the trial of 145 persons for illegal possession of weapons, and the seizure of large amounts of weapons and ammunition. Those measures had led to a decrease in the number of cases of violence against Croats in Vojvodina, where no case of forcible expatriation had been recorded since September. The Croat families who had fled in the tens of thousands were being encouraged by the authorities to return to their homes. Measures had also been taken to remedy the situation in the Plevlja area, where Muslims had been attacked and threatened, investigations had been started and weapons seized.

368. No arbitrary arrests, so-called political killings or disappearances had occurred in the territory of the Federal Republic of Yugoslavia. A few cases of abuse of authority by State officials might have been committed and, in that connection, 101 complaints had been lodged, 50 per cent of them having been found to be without legal foundation. Criminal proceedings had been brought against 32 persons and 12 sentences had been pronounced.

369. There were no detention camps in the territory of the Federal Republic of Yugoslavia. Prisoners taken in the Croat war had been exchanged through the International Committee of the Red Cross and persons who had not yet been exchanged were being held in ordinary prisons that were regularly visited by the International Committee of the Red Cross. An investigation had been initiated into allegations of ill-treatment at the time when there had been detention camps for prisoners of war, and persons who had committed acts of torture or other serious violations of the Geneva Conventions would be brought to justice.

370. The implementation of the measures prescribed by law against persons who advocated national, racial or religious hatred was a very sensitive issue, and a number of newspaper articles and statements on television should accordingly be condemned. In a context where nationalism was very much in evidence, the public prosecutors were not, in the opinion of the Federal Government, sufficiently resolute in bringing charges. Regulations designed to prevent advocacy of

371. The members of the Committee, on the basis of various consistent reports originating, in particular, from the Special Rapporteur of the Commission on Human Rights and the reports of the Conference on Security and Cooperation in Europe, strongly deplored the extent of violations of human rights in the territories controlled by the Government. They pointed out that the scale of the military means used in Croatia, Bosnia and Herzegovina, the use of matériel of the federal army of the former Yugoslavia, the deployment of air-forces and the use of tanks and large-calibre guns against the heavily bombed towns of Croatia and Bosnia and Herzegovina did not lend credence to the Government's contention that ethnic cleansing was being carried out outside the territory of the Federal Republic of Yugoslavia and was the responsibility solely of paramilitary units beyond the control of the civil and military authorities. Ethnic cleansing was, according to the same sources, one of the objectives of the war and had in fact already been largely attained, thanks to the use of methods such as summary execution, torture and rape. The acts thus committed incurred the international responsibility of the Federal Republic of Yugoslavia.

372. The members of the Committee nevertheless asked what measures had been taken to terminate ethnic cleansing, and in particular, the long series of summary and arbitrary executions and cases of torture, rape and disappearance; whether a tribunal had been formed to try crimes against humanity; what was the extent of the amnesty envisaged for violations committed in connection with the armed conflict; whether measures had been taken to lessen the seriousness of the human rights situation in Kosovo, which was characterized by arbitrary arrests and detentions, summary executions, ill-treatment of detainees and measures intended to impede the activities of political opponents; what measures had been taken to ensure respect for the existing frontiers; and, in general, for what reason the various nationalities which had previously lived in harmony in the former Yugoslavia had suddenly manifested such hatred towards one another.

373. In his reply, the representative of the Federal Republic of Yugoslavia emphasized that, although dismayed at the events in Bosnia and Herzegovina, the federal authorities were unable directly to influence the situation and conduct investigations of, for example, members of the federal army who had remained in Bosnia after the withdrawal of military forces from that territory. The Federal Government considered that the area of Bosnia where the Serbs were in a majority was an integral part of the Republic of Bosnia and Herzegovina. It avoided all relations with the so-called Serbian Government in Bosnia and was not at the origin of the atrocities committed in Bosnian territory. The conflict itself had mushroomed from a civil war into an international conflict and, consequently the enforcement of the rules of humanitarian law and the apportionment of responsibilities posed extremely complex questions, which must be resolved in the context of the International Conference on the Former Yugoslavia.

374. The Government was firmly resolved, despite the very complex problems of succession in the existing Yugoslavia, to prosecute all persons suspected of war crimes or crimes against humanity. The general amnesty would apply only to offences connected with the conflict, such as desertions, and would not cover war crimes or crimes against humanity. Ethnic cleansing was by no means an official policy aimed at driving the inhabitants out of the areas where they lived, a policy which public opinion would strongly oppose. It was to be hoped that the case of Yugoslavia would be the first opportunity for international justice to pronounce on war crimes and crimes against humanity.

375. As the Special Rapporteur of the Commission on Human Rights had noted,

facts and punish those responsible. In Kosovo, where coexistence between Albanians and Serbs inevitably led to human rights violations, certain members of the police had already been charged, but what they had done could certainly not come under the heading of mass killings or systematic torture. In Vojvodina, a census had been conducted in order to ascertain the number of young people who had left the region to evade their military obligations and who now qualified under the General Amnesty Act.

376. Referring to the origin of the current situation, he stated that under the previous regime politicians had brazenly embarked on hate campaigns, using the media for that purpose. The passions of the people were now unbridled and it was difficult to make them see reason. Paramilitary groups had organized themselves at the beginning of the civil war in the parts of the territory of the former Yugoslavia where the Serbs were in a majority and had effectively taken over responsibility for the police or the army. For more than 30 years, the Yugoslav army had kept its military arsenal in Bosnia and Herzegovina, and its personnel were mostly Serbs originating from that region or Croatia. It was therefore not surprising that the majority of those soldiers had stayed behind after the federal army had withdrawn.

377. Replying to further questions, he said that, in the new context in which frontiers had been recently established, it was difficult to establish border facilities rapidly. Demarcation lines were not always accurate and it was difficult to monitor the comings and goings of inhabitants in the mountainous region separating Montenegro from Bosnia and Herzegovina. The federal police were unable to intervene directly in areas where fighting was going on and the federal authorities were not competent to act directly to protect human rights. However, the Constitution would probably be amended after the elections of December 1993 so as to give the Federal Government a free hand in the protection of human rights.

Concluding observations by individual members

378. The members of the Committee said they were appalled by the human rights situation in the former Yugoslavia. They were unable to accept the argument of the representative of the Federal Republic of Yugoslavia, who had simply restated that no deliberate policy of ethnic cleansing had been or was being pursued in the territory of the Federal Republic of Yugoslavia and that most of the atrocities had been committed outside the territory by uncontrolled elements. They again emphasized that, in view of the means used, they were unable to endorse the argument that ordinary demobilized soldiers that were badly organized had been able to wage the conflict and pursue systematic ethnic cleansing. States parties were responsible for the observance of human rights when their representatives were involved and when their acts affected human beings even outside their national territory. There were obvious links between the Serbian forces and authorities outside the federal territory and the Federal Republic of Yugoslavia and the Federal Government was directly or indirectly responsible for the violations occurring there. The members of the Committee said they were extremely concerned about the fact that measures had not yet been taken to terminate ethnic cleansing and the serious violations of articles 6, 7, 9, 10 and 20 of the Covenant deriving therefrom outside and within the federal territory, to investigate the events which had occurred and were continuing to occur, or to punish those responsible. They also expressed their deep concern about the special situation in Kosovo, which needed to be addressed rapidly.

380. In concluding consideration of the report submitted by the Federal Republic of Yugoslavia, the Chairman of the Committee said that the submission of the report and the presence of a delegation in the Committee were proof that the Federal Government intended to fulfil its obligations under the Covenant. He nevertheless regretted that the dialogue had not been more constructive because of the delegation's refusal to comment on human rights violations outside the federal territory. It was surprising that the Government should state that it was powerless to react to events that were taking place on its borders and refused to shoulder any responsibility for policies pursued in the name of the Serbian nation. At the domestic level, no effective investigation seemed to have been undertaken into the human rights violations that had occurred there. It was to be hoped that the Federal Government would prove its good will through real action and genuinely fulfil its responsibilities in order to put an end to a situation that was deplored throughout the world.

Comments of the Committee

381. At its 1205th meeting (forty-sixth session), held on 6 November 1992, the Committee adopted the following comments.

Introduction

382. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the International Covenant on Civil and Political Rights; noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant; and acting under article 40, paragraph 1 (b), of the Covenant, the Committee, on 7 October 1992, requested the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit a short report on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, in the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the Covenant;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant.

383. Pursuant to that request, the Federal Republic of Yugoslavia submitted a special report dated 30 October 1992, which was considered by the Committee at its 1202nd meeting, held on 4 November 1992. The Federal Republic of Yugoslavia was represented by Mr. Konstantin Obradovic, Deputy Federal Minister for Human Rights and Ethnic Minorities; Ms. Sladjana Prica, Expert, Federal Ministry of Foreign Affairs; Mr. Miroslav Milosevic, Counsellor, Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva; and Mrs. Olga Spasic, Third Secretary, Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva. The report was taken up and

confirmation that the Federal Republic of Yugoslavia had succeeded, in respect of its territory, to the obligations undertaken under the International Covenant on Civil and Political Rights by the former Socialist Federal Republic of Yugoslavia.

Implementation of the Covenant by the State party

385. In its replies, the Federal Government referred exclusively to the situation in the territory of Serbia and Montenegro. It mentioned a number of instances of criminal proceedings taken against persons responsible for violations of individual freedoms (32 cases) and ethnic cleansing (5 cases). The Government affirmed that those were isolated acts and that it was not conducting any policy of ethnic cleansing. It indicated that there was no concentration camp established in its territory. It said it was dismayed by the atrocities committed in certain parts of Croatia and Bosnia and Herzegovina but declared that it could not assume responsibility for acts committed outside its territory and hence beyond its control. In regard to Kosovo, the Government did not dispute its responsibility but attributed the current state of affairs in that region to antagonism, which it was difficult to overcome between the Serbs and the Albanian "minority".

Concerns of the Committee

386. Various concordant sources of information - Mr. T. Mazowiecki, Special Rapporteur of the Commission on Human Rights, Rapporteurs of the Conference on Security and Cooperation in Europe and non-governmental organizations - describe mass arrests, summary and arbitrary executions, enforced or involuntary disappearances, torture, rapes and looting committed by Serbian nationalists both in Croatia (Krajina) and in Bosnia and Herzegovina. It is reported that some 20 camps are controlled by these armed men and that they are holding thousands of civilians, including women, children and elderly people, in conditions unworthy of the respect due to the human person. Massive violence has been unleased, inter alia, against Dubrovnik and Vukovar and is still being directed against Sarajevo. The Committee observed that the means deployed and the interests involved demonstrated the existence of links between the nationalists and Serbia which invalidated the Federal Government's claim to be exempt from responsibility.

387. According to the Special Rapporteur of the Commission on Human Rights, Mr. Mazowiecki, the purpose of these acts is to displace or eliminate Muslims, Croats or other nationalities and thus constitute ethnically homogenous areas.

388. The Committee strongly deplored this situation and regretted the refusal of the Federal Government to acknowledge its responsibility for such acts on the grounds that they were committed outside its territory.

Recommendations

389. The Committee firmly urged the Federal Government to put an end to this intolerable situation for the observance of human rights, and to refrain from any support for those committing such acts, including in territory outside the Federal Republic of Yugoslavia. It called upon the Government to show a clear political will and to effectively dissociate itself from the Serbian nationalist movements by totally repudiating their ideology and condemning their schemes. The Committee considers that a show of unwavering firmness on this point would

recommended that the Federal Government put an end to the repression of the Albanian population in the province of Kosovo and adopt all necessary measures to restore the former local self-government in the province.

Niger

390. The Committee considered the initial report of Niger (CCPR/C/45/Add.4) at its 1208th and 1212th meetings, held on 23 and 25 March 1993 (CCPR/C/SR.1208 and 1212). (For the composition of the delegation, see annex XI.)

391. The report was introduced by the representative of the State party who said that his Government regretted that it had been unable to submit the report to the Committee when originally suggested. He further added that a National Conference had been convened in 1991 as a result of which a transitional Government headed by an elected Prime Minister and a High Council of the Republic had been established. A new Constitution had been adopted by national referendum in December 1992 and many of the principles set out in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights had been taken into account in its formulation. With the rejection of the single-party system, some 40 political parties had been formed and, in the recent legislative elections, candidates from 12 of those parties had run for office. Furthermore, eight parties had nominated candidates for the first round of the presidential elections which had taken place on 27 February 1993. All the necessary conditions for establishing a true democracy and an environment favourable to the promotion and protection of the rights of individuals and of society as a whole had thus been created during the past two years.

392. With regard to the constitutional and legal framework within which the Covenant was implemented, members of the Committee wished to receive further information on the status of the Covenant within Niger's legal system; on the extent to which the provisions of the Covenant had been incorporated into the new Constitution; on the remedies referred to in paragraph 13 of the report; on the organization of the judiciary; on the relationship between the National Conference and the Government and between the Constitution and the National Charter; on means used to disseminate information about the Constitution and human rights; and on difficulties experienced by Niger in implementing the provisions of the Covenant, such as extreme poverty or the high rate of population growth. It was also inquired what impact the Tuareg rebellion in the northern part of the country had on the human rights situation; whether there were any political detainees in the country, and, if there were any, what steps had been taken to ensure their release.

393. With regard to article 4 of the Covenant, members wished to receive additional information on the special security zones reportedly established in certain parts of the territory and asked whether any rights provided for in the Covenant had been suspended in those areas by virtue of article 4 and whether a state of emergency had ever been declared in Niger.

394. As to the prohibition of discrimination on various grounds, members wished to know what measures had been envisaged to address the imbalance between the sexes in such areas as school attendance and literacy; what steps were being taken to eradicate the practice of marriage of girls below the age of 14; whether any women had been appointed members of the National Conference; how many women had been elected during the recent parliamentary elections; whether the new Constitution contained any provisions to ensure equality between the

sex or religion, had been extended to include the other categories specified in the Covenant; and how the legal provisions regarding children were implemented in practice.

395. In connection with articles 6, 7, 8 and 10 of the Covenant, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and carried out in the past years; to what extent the provisions of article 6, paragraph 5, of the Covenant were implemented in Niger; whether the allegations of extrajudicial executions, disappearances, torture and cruel treatment and arbitrary arrests by the army or the security forces, particularly of members of the Tuareg ethnic group, had been investigated and, if so, with what results; whether those found guilty of such violations had been pardoned and reinstated; whether the new constitutional system had established compensation for victims of past violations of human rights, such as torture or disappearance; what were the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; whether a new commission of inquiry into political crimes and abuses had been set up to investigate violations which had occurred during the 1991-1992 transitional period; and whether there was any institution investigating complaints from prisoners awaiting trial or convicted prisoners. Clarification was also requested on the underlying social problem addressed by Act No. 61-27 mentioned in the report, which seemed to suggest that slavery was a continuing social problem, particularly among the Tuareg people.

396. With reference to article 9 of the Covenant, members of the Committee wished to receive information on Niger's legislation governing arbitrary arrest or detention and on measures taken to ensure respect for the 48-hour limit on police custody.

397. Regarding article 14 of the Covenant, members of the Committee wished to receive further information on the independence and impartiality of the Judiciary; on the safeguards to guarantee the rights provided for in article 14 of the Covenant; on the right to legal representation; and on the availability of free legal assistance. It was also asked whether magistrates were subject to removal from office; whether the current legislation criminalizing unlawful enrichment embodied a presumption of guilt contrary to the provisions of article 14, paragraph 2, of the Covenant; whether the High Court of Justice set up under the transitional regime was still in existence; whether the State Security Court, reinstated in 1992, would continue to exist under the new Constitution and what the status, competence and composition of that court were.

398. In connection with articles 17, 18, and 19 of the Covenant, additional information was requested on the relationship between the independent and the State-run press. It was inquired whether any subsidies were provided to independent press organs; whether a commission of inquiry had been set up to investigate alleged violations of privacy during the transitional period, including searches without warrants and illegal searches; and whether private non-governmental organizations were able to publish and distribute newsletters about the human rights situation in the country and had access to public broadcasting.

399. With reference to article 25 of the Covenant, members of the Committee wished to receive additional information on the legal provisions for the

400. Regarding article 27 of the Covenant, members of the Committee wished to receive additional information on the size and situation of the various ethnic groups, on conflicts, if any, between such groups and on their representation in the Government and the civil service.

401. In his reply, the representative of the State party emphasized that many problems experienced in Niger with regard to the exercise of civil and political rights were due to the upheavals caused by the dismantling of the old order and the institution of a new order committed to the building of democracy and the protection of human rights. The media had an important role to play in disseminating knowledge of human rights and in creating an atmosphere more conducive to awareness of national and international legal instruments in that area.

402. There were no political prisoners in the country. The Tuareg rebellion had complex historical roots which could be dated back to the accession to power of General Ali Saïbou in 1987 who had proclaimed a policy of relaxation of ethnic tension and issued a general amnesty. That policy had led to the return of many refugees who had fled the country in the 1980s because of the drought. However, these persons had been unable to resume their previous economic activities. In addition, the northern part of the country had been in a state of considerable upheaval caused by the conflict between two neighbouring countries, into which some of those people who had returned to Niger in 1987 had been drawn. All those factors had combined to bring about the acts of insurrection in that part of the country which, in turn, had been exploited by certain politicians to further their own ambitions. The representative however emphasized that a cease-fire had been declared with the "Front de Libération de l'Aïr et de l'Azaouad" (FLAA) effective from midnight on 20 March 1993. Although the Government had released several rebel prisoners little information was available on hostages in rebel hands.

403. Referring to questions relating to the status of the Covenant, the representative of the State party explained that, under article 120 of the new Constitution, duly ratified treaties prevailed over domestic law. Furthermore, if the Supreme Court was apprised that an international commitment contained a clause contrary to the country's Constitution, ratification could only proceed once the Constitution had been revised. The provisions of the Covenant and of the Optional Protocol were directly applicable by the courts. However, victims of human rights violations often preferred to seek redress before traditional bodies.

404. With regard to questions relating to the status of women, the representative of the State party said that there was a certain interaction between the precepts of Islam and the provisions of positive law. Although two new women's organizations had been established since the onset of the democratic process no significant progress had been achieved in that area due to the extreme poverty in the country and a general lack of political will. However, efforts were being made to draft a new family code and a rural code and, in recent years, many women had been appointed to positions of high responsibility. Campaigns to remedy the low literacy rates in the country had been mounted by women's associations and non-governmental organizations and considerable progress had been made in endeavours to eradicate such practices as marriage of very young girls. All unacceptable customs regarding the status of women within society were widely condemned by the authorities but difficult to combat because

mandatory counsel to ensure the defence of children in such instances. Furthermore, rehabilitation of young offenders was carried out at special boarding institutions, usually with the approval of the family, where technical skills were taught. Niger had ratified the Convention on the Rights of the Child in 1990.

406. With reference to articles 6, 7 and 10 of the Covenant, the representative of the State party explained that, following the events in Tchin-Tabaraden in May 1990, measures had been taken against the highest echelons of the army and public service who had been directly or indirectly responsible. Other excesses committed by the army had been investigated and the culprits brought to justice. Those measures had, however, still been insufficient to satisfy certain extremists who, for their own part, were unwilling to make any concessions.

407. While capital punishment was still a theoretical possibility in Niger, it had not been administered for more than 10 years and those persons who had been sentenced to death in that period had received a presidential pardon. Training was provided for police and members of law enforcement agencies at the police college in Niamey, whose curriculum included a course on human rights and fundamental freedoms.

408. Regarding article 8 of the Covenant, the representative of the State party explained that the existence of the practice of slavery was difficult to establish because of the conditions prevailing in the northern part of the country.

409. With respect to article 9 of the Covenant, the representative of the State party explained that the Government had joined all the various organizations involved in the defence of human rights in order to reach a settlement of the problem of arbitrary arrests and for the freeing of all those held without charge. Those efforts had led to the release of all but 60 detainees, whose cases had been referred to the judicial authorities.

410. Referring to questions relating to article 14 of the Covenant, the representative of the State party said that a special association for magistrates had been established to ensure their independence vis-à-vis the Executive branch. A commission on political, economic and other crimes and abuses had been established to investigate social abuses, misappropriation of funds and other illegal practices. The Commission carried out its inquiries through regular channels, transmitting the results of its investigations to the High Council of the Republic. A law enacted in 1991 guaranteed legal aid for those who lacked the resources to exercise their right to justice as plaintiff or defendant.

411. In response to questions relating to articles 17, 18 and 19 of the Covenant, the representative of the State party said that the press was free and received no State subsidy. It experienced certain financial difficulties which affected the quality of its output and its role was limited by illiteracy.

412. Fifteen political parties had been provisionally authorized under the 1989 Constitution, because it made no provision for a multi-party system. Those parties had therefore been approved pending a new law on political parties and the adoption of a new Constitution. The only remaining restriction on the establishment of political parties and associations was that no political party

emerged. All ethnic groups were represented in the different political parties, although, inevitably, their leaders derived more support from their native regions. Niger had eight major ethnic groups which were closely interrelated and 90 per cent of the population was Muslim. Consequently, issues were generally settled among those groups in a peaceful manner and following the concept of Ummah and the precept of tolerance. Popular participation in the recent election had been as low as 8 per cent in the north, as compared to 31 per cent country-wide. The Government had established a new Ministry of State for National Reconciliation, with a view to entrusting problems of national unity and the participation of minority populations in public affairs to a single political structure.

Concluding observations by individual members

414. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for having endeavoured to respond to questions raised by members. However, the report lacked information on laws and regulations relating to the implementation of the Covenant, and on factors and difficulties impeding the application of the Covenant.

415. Members noted with satisfaction the move to establish a multi-party democracy in Niger, the adoption of a new Constitution, the establishment of local human rights groups, the attempts to overcome religious and ethnic divisions in the country, the release of many prisoners and the signing of a cease-fire agreement with a view to ending the Tuareg rebellion.

416. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. Deep concern was expressed over the fact that there had been no investigation of cases of extrajudicial executions, disappearances, torture and arbitrary arrests by the army and members of the armed forces in 1990-1991, particularly of members of the Tuareg ethnic group. Members also expressed concern at persisting discrimination against women in some respects; the excessively long periods of detention in custody and pre-trial detention; the actual implementation of articles 10, 14 and 19 of the Covenant; and the low level of popular participation in the recent elections.

417. The representative of the State party assured the members of the Committee that the comments that had been made would be transmitted to his Government.

418. In concluding the consideration of the initial report of Niger, the Chairman thanked the delegation for having engaged in a constructive dialogue with the Committee.

Comments of the Committee

419. At its 1232nd meeting (forty-seventh session), held on 8 April 1993, the Committee adopted the following comments.

Introduction

420. The Committee expresses its appreciation to the Government of the State party for its report and for engaging in a dialogue with the Committee on the implementation of the Covenant in Niger. The Committee regrets, however, that the report, which is extremely succinct, was not drawn up in accordance with the

Committee from gaining a clear idea of the real human rights situation in the country. The Committee nevertheless thanks the delegation of Niger for endeavouring to reply to the questions raised and thus make up for the report's shortcomings.

Positive aspects

421. The Committee notes that new developments recently took place in Niger, which had a positive impact on the human rights situation in the country. A process of democratization is under way; it has been marked by the meeting of a National Conference, the adoption of a National Charter and then a new Constitution, the establishment of a multi-party system, the organization of general elections, the relaxation of control over the press, and the recent truce with Tuareg movements. Thus, there are positive factors that should lead to the establishment of a pluralist democracy in Niger, particularly since one can point to other elements such as greater access on the part of women to high-level civil service posts and the training of law enforcement agents with regard to human rights and public freedoms.

Factors and difficulties impeding implementation of the Covenant

422. The Committee notes that the events that occurred in the north of the country in 1991 and 1992 and brought the government forces into conflict with Tuareg movements had a very negative impact on the human rights situation throughout the country. The representative of Niger indicated that, owing to the continued existence of certain traditions and customs, Niger is not fully complying with its obligations under the Covenant.

Main subjects of concern

423. The Committee is extremely concerned about the cases of extrajudicial executions and torture that occurred in the context of the disturbances in 1991 and 1992 in the north of the country and deplores the fact that these cases have not, to date, been the subject of investigations or compensation on the part of the authorities. The Committee recalls in this regard that the Covenant does not authorize, in any case, derogations from articles 6 and 7 of the Covenant. The Committee stresses that the implementation of articles 9, 10 and 14 of the Covenant, particularly with regard to the duration of police custody, the conditions of detention for persons deprived of freedom and available recourse in cases of human rights violations is not satisfactory.

424. The Committee is concerned at the situation of women who continue to be the object of discrimination. It is also concerned about the shortcomings in observance of articles 18 and 19 of the Covenant. It regrets that article 27 is not fully implemented in Niger as well as the particularly low level of participation during the recent elections, especially in the north of the country.

Suggestions and recommendations

425. The Committee recommends to the State party that investigations should be conducted into the cases of extrajudicial executions which were carried out in the context of the disturbances in 1991 and 1992 in the north of the country and of the torture and maltreatment of persons deprived of their freedom. The Committee considers that the agents of the State responsible for such human

426. The Committee further recommends that the State party should firmly endeavour to bring its domestic legislation and practice into line with the provisions of the Covenant and, in particular, provide full protection for the rights of women and the rights of ethnic or religious minorities living in the country.

427. It is also recommended that Niger should draw up its second periodic report and the basic document in accordance with the Committee's general guidelines regarding the form and contents of periodic reports (CCPR/C/20/Rev.1) and the consolidated guidelines for the initial part of the reports of the States parties (HRI/1991/1) and provide complete information on measures taken, both in law and in practice, in order to implement the provisions of the Covenant. The Committee suggests that in implementing the recommendations contained in paragraph 426 and the present paragraph, the State party should request the assistance of the United Nations Centre for Human Rights.

Dominican Republic

428. The Committee considered the third periodic report of the Dominican Republic (CCPR/C/70/Add.3) at its 1213th to 1215th meetings held on 25 and 26 March 1993 (CCPR/C/SR.1213-1215). (For the composition of the delegation, see annex XI.)

429. The report was introduced by the representative of the State party, who drew attention to a number of developments in the human rights situation in her country since the third periodic report had been prepared. For example, Haitians employed as sugar cane cutters had been furnished with temporary residence papers and were now permitted to keep those documents in their possession. Changes had also been made in the electoral system with a view to developing greater transparency. There was no systematic violation of human rights in the Dominican Republic, although, as in all countries, isolated instances might occur.

Constitutional and legal framework within which the Covenant is being implemented, state of emergency, non-discrimination and prohibition of forced labour

430. With regard to those issues, the Committee wished to know if there had been, during the period under review, cases in which the provisions of the Covenant had been directly invoked in the courts or mentioned in court decisions; the extent to which the provisions of article 37, paragraphs 7 and 8, of the Constitution concerning possible restriction of rights recognized in the Covenant in time of state of siege or national emergency conformed with the provisions of article 4, paragraph 2, of the Covenant; the application of the principle of reciprocity regarding the enjoyment by aliens of the rights set forth in the Covenant; in what respects, other than in the exercise of political rights, were the rights of aliens restricted as compared with those enjoyed by Dominican citizens; whether the situation of Haitian workers had changed in practice since the adoption of Decree No. 417/90; whether specific measures had been taken in order to avoid abuses of Haitian workers during their transfer and during their stay in the sugar cane plantations; whether there had been any investigation of the allegations of forced labour by Haitian workers in such plantations and of the seizure of their identity documents; and whether follow-up action had been taken as a result of the Committee's views in respect of Communication No. 193/1985 (Pierre Giry vs. Dominican Republic). Further information was also requested on the application of the principle of reciprocity in the matter of the treatment of aliens.

431. In addition, members of the Committee wished to know what was the exact status of the Covenant in national law; whether the Covenant and the third periodic report had been published in the Dominican Republic; the extent to which the deportation of aliens, and their detention for the purposes of deportation, was in conformity with article 13 of the Covenant; whether a citizen or non-citizen could be exiled without grounds simply by order of the Government; whether there had been any change in the allegedly slave-like working conditions of Haitian workers in the sugar cane industry and what steps had been taken to monitor that situation; and what agencies had been established to act on behalf of individual workers in cases of disputes with employers.

432. Further information was also requested on the role of the State Sugar Council in recruiting foreign workers and the use of armed security guards for that purpose; the right of families to accompany workers to sugar cane plantations; the use of vouchers instead of the national currency as wages; the right of plantation workers to organize and to engage in collective bargaining; the nationality of those affected by the recent deportation Decree No. 233-91

and the exact circumstances of that deportation; and on any steps taken by the Office of the Procurator-General of the Republic to investigate human rights abuses, especially in the context of the repatriation of foreign workers.

433. In reply, the representative of the State party said that, to be incorporated into domestic law following ratification, instruments had to be promulgated by the Government in the official gazette. That had been the case for the Covenant, which now formed part of domestic legislation. Under the Constitution, international instruments took precedence over domestic legislation in the event of conflict. The provisions of the Covenant could be invoked in the courts, although their Government had no knowledge of any cases in which court judgements had been based specifically on those provisions. The establishment of a human rights centre was being planned both to investigate human rights abuses and to promote awareness of human rights instruments. Additionally, non-governmental organizations and local human rights committees had absolute freedom to conduct their activities, including the transmission of reports of alleged human rights abuses to the Government, which the Government attempted to investigate.

434. The flow of Haitian nationals to the Dominican Republic was largely due to the political and economic problems in Haiti. The Dominican Republic was the most easily accessible State and it had accepted the Haitians and given them refugee status in conformity with the Convention on the Status of Refugees. Of the estimated 500,000 Haitian nationals who lived in the Dominican Republic, only a small portion worked in the sugar cane fields. The rest had employment similar to that of Dominicans. While there was no denying that illegal workers were vulnerable to exploitation, slavery was not practised in the Dominican Republic. Furthermore, there was no proof that Haitians had been recruited by Dominicans in Haiti; they had come to the Dominican Republic of their own free will in search of a better life. Their abuse by unscrupulous employers did not stem from any government policy.

435. While the working and living conditions of sugar cane cutters were undeniably poor, there had been a significant improvement since 1991 resulting from cooperation between the Government and the International Labour Organization. With respect to child labour, for example, statistics of the labour ministry now showed that fewer than 10 per cent of workers in the sugar cane industry were minors. Wages too had improved and workers were no longer paid in coupons but in cash under the supervision of Labour Department Inspectors. Eleven such inspectors continuously visited sugar mills and cane fields throughout the country to verify that proper labour practices were followed.

436. With regard to the principle of reciprocity, it was true that the Civil Code provided for aliens to be granted civil rights on such a basis. However, the Civil Code predated the Covenant and had not yet been amended accordingly, as perhaps it ought to be. In any case, now that the Covenant was part of the domestic legal order, aliens enjoyed the same civil and political rights as Dominican citizens. Under article 9 of the Constitution, however, foreigners were forbidden from participating in political activities. That raised a contradiction with articles 82 and 84 of the Civil Code allowing foreigners to be part of municipal governments, which, in fact, meant that they had to belong to a political party.

437. The provisions of the Penal Code concerning expulsion of aliens were mainly intended to deal with cases where the internal and external security of the State were threatened. In practice, those provisions had not been used for many years and should perhaps be amended. A new law on immigration that contained no provisions on the subject of expulsion was currently being drawn up with the

help of advisers from international organizations, including the International Organization for Migration. The expulsion of Haitian citizens under the age of 16 pursuant to Decree No. 233-91 had been a response to complaints concerning the employment of minors in the agricultural sector. The Government had investigated those complaints and found that the minors in question had been recruited in their own country by Haitian nationals, who had lured them to the Dominican Republic with promises of high earnings. In many cases, they had no family or relatives in the Dominican Republic. In the light of the situation prevailing in Haiti, the measure had been suspended. The delegation would convey the Committee's concern to the Dominican Government so that steps could be taken to deal with the situation.

438. With regard to Communication No. 193/1985, which was contained in the report of the Committee to the General Assembly in 1990 (A/45/40, vol. II), the Minister for Foreign Affairs had received no documentation on that case and suggested that the Committee adopt new recommendations. Since the Government strictly observed any deadlines established by the Committee, its failure to respond was due, no doubt, to a lack of communication.

Right to life, liberty and security of person, treatment of prisoners and other persons deprived of liberty and right to a fair trial

439. With respect to those issues, the Committee wished to know what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what measures had been taken by the authorities to ensure strict observance of article 7 of the Covenant; whether confessions or testimony obtained under duress were admissible before the courts; whether the risk of being punished by suspension from duty without pay for up to 30 days was sufficient to deter officials from resorting to torture; what the powers of the Directorate General of Prisons were in the matter of supervision of penal establishments; whether there were any independent bodies empowered to visit places of detention and to receive complaints; whether any consideration was being given to amending the rules on the prevention of liberty to guarantee that a person's family is informed as soon as possible after arrest; and what had been the outcome of the study aiming to entrust the appointment of judges to a judicial council independent of the executive and legislative powers. Further information was requested on problems and difficulties in observing the limitation of the 48-hour period of police custody and in allowing a lawyer to see his client during this period; and on the possibility of accused persons obtaining free legal assistance and the assistance of an interpreter, with particular reference to Haitian workers who do not speak Spanish.

440. Members of the Committee also wished to know whether any of the known cases of extrajudicial killings, torture, and ill-treatment of detainees had actually been investigated and, if so, how many and to what effect; whether it was true that the Penal Code exempted any public official from punishment for torture if the official was acting on orders from a superior; and to what extent the 48-hour time-limit for arraignment was respected given the fact that 70 per cent of the prison population in the Dominican Republic was being held pending trial, whether minors were being detained in prisons together with adults; and what provisions existed to ensure that judicial orders were complied with. Further information was also requested regarding health and sanitary conditions in prisons, which were reported to be extremely poor.

441. Replying to the questions, the representative of the State party said that the use of firearms was governed by Act No. 36, under which members of the armed forces, the police and some high-ranking civil servants were authorized to carry

firearms. Civilians could also obtain a permit for firearms, although efforts have been stepped up to tighten the rules and to disarm civilians following recent violations and some unfortunate incidents.

442. Both the Penal Code and the Constitution prohibited torture and confessions obtained under duress were not admissible before the courts. Allegations of torture in prisons were investigated and those found to be responsible were tried and punished. The practice of torture was not envisaged by Dominican legislation. While excesses were occasionally committed, those responsible were brought to justice, and the practice was tending to disappear as a result of constant vigilance. In some cases, minors had been inadvertently incarcerated with adults but the errors had been discovered and corrected. The Directorate General of Prisons had been established under Act No. 224 of 1984 to exercise greater oversight and to ensure that the Standard Minimum Rules for the Treatment of Prisoners were observed. Many non-governmental organizations also evaluated and monitored the conditions of prisoners. A commission on prison reform made up of prominent personalities had noted the shortcomings of the prison system and, as a result, new prisons had been constructed to meet modern prison standards.

443. A preliminary draft on the establishment of a Judicial Council had been submitted to the legislature. Under the proposed plan, the Council would appoint judges through a commission comprised of the President of the Senate and Deputies. That would allow judges greater independence in the exercise of their duties and should lead to a more independent judiciary. The plan to establish the Council had received broad support from all the political parties that were planning to participate in the forthcoming elections.

Freedom of movement and expulsion of aliens; freedom of religion, assembly and association; equality of sexes and protection of the family; right to take part in the conduct of public affairs; and rights of persons belonging to minorities

444. With regard to those issues, the Committee wished to know whether appeals against expulsion orders had suspensive effect; how many expulsions had occurred each year and the grounds on which they were ordered; whether the Government had plans to take any measures with respect to religious sects mentioned in paragraphs 89 to 90 of the report; what the situation was in practice with regard to equality of men and women at work and in respect of participation in the conduct of public affairs; why the proposed new Labour Code did not recognize the right to strike of civil servants; the extent to which the provisions denying to members of the police and the armed forces the right to vote and to be elected conformed with article 25 of the Covenant; and the extent to which article 27 of the Covenant was being implemented in the light of the assertion that there were no ethnic, religious or linguistic minorities in the Dominican Republic.

445. Members of the Committee also wished to know the extent to which punishment by exile was in conformity with article 12 of the Covenant; whether there were special courts for aliens in the Dominican Republic and, if so, whether the judgements of those courts could be appealed to the Supreme Court; to what extent a father's right to custody over a natural child conformed with article 24 of the Covenant; what kind of offences gave rise to restriction on freedom of movement, as provided for under article 8, paragraph 4, of the Constitution, and what such restrictions entailed; to what extent article 8, paragraph 6, of the Constitution prohibiting the expression of thoughts "prejudicial to the dignity and morality of individuals, to public policy or to propriety" conformed to article 19 of the Covenant; what steps were being taken to ensure that relevant legislation was compatible with article 24 of the Covenant; whether a special law on working conditions in the export processing

zones enabled trade unions to operate freely; whether religions other than Catholicism, which was specifically protected under articles 261 and 262 of the Penal Code, received equal protection under the law; and whether the decision to prohibit certain radio broadcasts in Creole had established that such broadcasts would be subversive or a threat to public order.

446. Further information was also requested regarding the conversion of a deportation order into a prison sentence of up to two years, as provided for under article 13, paragraph 11 (f) of the Migration Act; the situation of religious and linguistic minorities in the Dominican Republic; and on progress achieved in implementing the draft law on eliminating discrimination in civil, commercial, penal and agrarian matters.

447. In reply, the representatives of the State party said that the Dominican Republic had adopted a new labour code in June 1992 which clearly established freedom of association. That new code was now being enforced with the approval of the International Labour Organization, which had warmly received the last report submitted to it by the Dominican Republic. With regard to discrimination against women, the representative underlined the important role played by women in the life of the country. There were women ministers and women made up over 60 per cent of the staff of banks, the public administration and the judiciary.

448. Although Roman Catholicism was the State religion, freedom of worship was guaranteed by the Constitution for all religions. The authorities could intervene only when the activities of a particular sect or religion threatened the integrity of the State. Religious sects were banned only for insulting other religions. There was no special legislation concerning ethnic minorities because there were really no such minorities in the Dominican Republic. Haitians were the largest group of foreign nationals and they enjoyed the same rights as Dominicans. With respect to the suspension of radio broadcasts in Creole, the radio station in question had been broadcasting news and information to Haitians regarding the political upheaval in Haiti and it had been deemed to be intervening in that country's internal affairs.

Concluding observations by individual members

449. Members of the Committee expressed their concern over the status of the Covenant in Dominican law. What was needed was not just an official promulgation of the Covenant but broad dissemination of its provisions by the Government. Not only did the country's legal system not guarantee all the rights embodied in the Covenant, but in many cases it was in open contradiction with the Covenant; thus, the Government had to make a basic effort to bring a large body of domestic legislation into line with international human rights instruments. In this regard, it was noted that the pace of promotion of human rights in the Dominican Republic had slowed considerably since the State party's ratification of the Covenant 15 years ago. There needed to be greater awareness of the provisions of the Covenant, particularly among judges, police personnel, the armed forces and prison employees.

450. The situation of Haitian workers remained a matter of pressing concern and little action had been taken to remedy the situation. In this connection, members of the Committee expressed concern over the State party's compliance with the provisions of the Covenant concerning forced labour. Freedom of association was not guaranteed and trade unionists had been persecuted. In particular, the expulsion of Haitian workers was unjustified and inhumane, particularly in the case of those aliens under 16 or over 60 years of age. The Committee had been told that Presidential Decree No. 233-91, which was in flagrant violation of a number of rights embodied in the Covenant, had been

suspended only, not abrogated. It was feared that the Government could still make use of that legislation if it so wished.

451. Members of the Committee expressed their concern over the protection of the rights of detainees. The police did not always respect the right to life, the practice of torture was uncontrolled, ill-treatment of detainees was a widespread practice, and the Government frequently did not investigate complaints, despite its obligation to do so. Additionally, the penalties for police and armed forces personnel found guilty of using torture were inadequate. The police did not obey court orders to release suspects and preventive detention extended well beyond the 48-hour period mandated by law. In addition, prosecutors could appeal writs of habeas corpus.

452. Members of the Committee expressed their concern over reported firearms abuses by members of the military and the police, particularly with regard to the excessive use of force by the police, including extrajudicial killings, torture and the ill-treatment of detainees. It was to be hoped that the Government would, as it had promised, provide training in human rights to its police and military personnel. The inadequacy of the current system for appointing members of the judiciary was emphasized, as was the need for an independent judiciary. In its absence, individuals would continue to be denied recourse when their rights were violated. Furthermore, the Dominican Republic needed to establish a truly independent agency for the investigation of complaints regarding human rights abuses.

453. While welcoming the indications provided by the State party of its willingness to cooperate more fully with the Committee in the future, members of the Committee emphasized their regret that both the report and the delegation had not been able to address the Committee's concerns. Regarding Communication No. 193/1985, there was no need for the Committee to make further recommendations with respect to it; rather, it was incumbent upon the State party to take all measures required to avoid a violation of the Covenant. With respect to article 27 of the Covenant, it was noted that freedom of religion was not guaranteed and minority religions were subject to discrimination. The prohibition of Creole-language broadcasts was not in conformity with the provisions of the Covenant.

454. The representative of the State party said that her Government would take note of the Committee's recommendations. Although the Dominican Republic had not been able to comply consistently with all the provisions of the Covenant, it had no intention of violating the Covenant in a systematic manner.

455. In concluding the consideration of the second periodic report of the Dominican Republic, the Chairman of the Committee thanked the delegation for having engaged in a constructive dialogue with the Committee.

456. At its 1232nd meeting (forty-seventh session), held on 8 April 1993, the Committee adopted the following comments.

Introduction

457. The Committee welcomes the third periodic report of the Dominican Republic and the opportunity to continue its dialogue with the State party. The Committee notes, however, that the information provided in the report was in many respects incomplete and did not take into account the dialogue that had taken place during the Committee's consideration of the previous report. The Committee would also have appreciated a more candid appraisal by the State party of existing legislative deficiencies as well as factors and difficulties encountered in the application of the Covenant. The third periodic report added

little to what had been reported earlier in that respect and is deemed by the Committee to be insufficient. The Committee, however, expresses its appreciation to the delegation for the report as well as for the additional information it provided in response to questions raised by members of the Committee. However, many questions were not addressed and much of the information which was provided was not sufficiently detailed.

Factors and difficulties impeding the application of the Covenant

458. The Committee notes that the Dominican Republic has received large numbers of refugees and foreign workers. It also notes that the State party has had to overcome a legacy of authoritarianism. These and other circumstances may to a certain extent explain why many of the provisions of the Covenant still have not been incorporated into the legal order of the Republic.

Principal subjects of concern

459. The Committee notes with regret that, in general, there has been a lack of progress in the application of the Covenant since the consideration of the State party's second periodic report. In particular, there remains a significant body of legislation which still is not in conformity with the Covenant despite the fact that more than 15 years have elapsed since the accession of the Dominican Republic to the Covenant. A number of rights contained in the Covenant are not guaranteed in the present legal framework and other rights are being invalidated by domestic legal provisions that are incompatible with the Covenant. The Committee also regrets that it has not been informed in an unequivocal way about the Covenant's *de jure* and de facto status within the legal system of the Dominican Republic. In addition, the grounds for declaring a state of emergency are too broad, and the range of rights that may be derogated from is too wide to be in conformity with article 4 of the Covenant. The Committee is also concerned over the lack of adequate knowledge of the provisions of the Covenant by the legal profession, judicial officials and the public at large. Furthermore, the Committee notes that there is no governmental authority specifically responsible for ensuring the observance of human rights standards. In that connection, the Committee notes that there has not been sufficient follow-up to its views adopted under the Optional Protocol but welcomes the promise of the State party for closer cooperation in this regard in the future.

460. The Committee expresses its concern over the lack of protection afforded to Haitians living or working in the country from such serious human rights abuses as forced labour and cruel, inhuman or degrading treatment. The Committee expresses its concern over the fact that the protection of the fundamental human rights of foreigners is subject to reciprocity. The Committee also expresses its concern over the degrading living and working conditions of Haitian labourers and the tolerated practices that effectively restrict their freedom of movement. Although some progress has been made in improving their living and working conditions, particularly with regard to child labour, these remain at an unacceptably low level. Furthermore, while many Haitian workers have been prevented from leaving their place of work, there have also been incidents of mass expulsions from the country. In this regard, the Committee considers that Presidential Decree No. 233-91, which resulted in the mass deportation of Haitian workers under 16 and over 60 years of age, represents a serious violation of several articles of the Covenant.

461. The Committee expresses its concern over the low level of legal protection and effective remedies available to the public concerning arbitrary arrest and lengthy pre-trial detention. The Committee notes with concern the large number of detainees awaiting trial, which is particularly worrisome in view of the high number of cases of alleged police abuse during detention and reports of

unhealthy prison conditions. The Committee also underlines that punishment by exile is not compatible with the Covenant. Moreover, the powers and independence of the judiciary do not appear to be sufficiently protected. A judicial order for release should be implemented without question.

462. The Committee expresses its concern over the inadequate protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. In this regard, the Committee notes that the prohibition of broadcasting in a language other than Spanish is not in conformity with article 19 of the Covenant. The right of peaceful assembly is apparently not adequately respected by the police.

Recommendations

463. The Committee recommends that the State party should undertake a major initiative aimed at harmonizing its domestic legislation with the provisions of the Covenant. In this regard, the Constitution and the relevant civil and penal codes should be reviewed in order to bring the law and its application into line with the provisions of the Covenant. The State party should also consider the establishment of offices and mechanisms to monitor the application of human rights standards and promote and protect human rights. This could include the designation of an independent office to receive complaints and, where necessary, undertake investigations into abuses. More publicity should be given to the provisions of the Covenant and the Optional Protocol in order to ensure that the legal profession, the judiciary and the general public are more aware of their contents.

464. The situation concerning the living and working conditions of Haitian labourers should be addressed as a matter of priority. The State party should ensure the implementation of laws concerning labour standards, including adequate monitoring of working conditions. In this regard, the Committee emphasizes the necessity of strengthening the capacity of the labour inspectorate to effectively monitor the working conditions of Haitian labourers, with a view to ending their slave-like exploitation. Child labourers in particular require a higher level of protection and the relevant international standards should be vigorously applied. There should also be more active enforcement, particularly in the "export zones", of the exercise of trade union rights in conformity with article 22 of the Covenant. Additionally, Presidential Decree No. 233-91 should be abolished rather than merely suspended.

465. The Committee recommends that measures should be undertaken immediately to reduce the backlog of persons in detention awaiting trial and that the number of exceptions to the 48-hour rule should be significantly reduced. Much more severe sanctions are needed to effectively discourage torture and other abuses by prison and law enforcement officials. Steps should also be taken to tighten the regulations governing the use of firearms by police. Training courses in international human rights standards should be provided for police and prison officials.

466. The Committee recommends that the State party take further steps for the elimination of discrimination concerning ethnic, religious and linguistic minorities and recommends that the relevant legislation be reviewed in order to ensure its conformity with the Covenant.

Uruguay

467. The Committee considered the third periodic report of Uruguay (CCPR/C/64/Add.4) at its 1216th to 1218th meetings, held on 29 and 30 March 1993 (CCPR/C/SR.1216-1218). (For the composition of the delegation, see annex XI).

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family and children

468. With respect to those issues, the Committee wished to know what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Uruguay; what consideration the Government had given to the comments made by Committee members regarding the compatibility of Act. No. 15,848 of 22 December 1986 (Statutory Limitations Act) with article 2, paragraph 3, and article 9, paragraph 5, of the Covenant; whether any legal provisions relating to the declaration and implementation of a state of emergency had been adopted different from those which were in effect during the de facto regime; how existing norms conformed with article 4 of the Covenant, particularly paragraph 2 thereof, and what safeguards and effective remedies were available to individuals during a state of emergency; whether Act No. 16,048 of 16 June 1989 had been applied since the submission of the report; what progress had been achieved by the adoption of Act No. 16,045 of 2 June 1989 relating to non-discrimination based on sex; and what the law and practice were relating to the employment of minors and how children were protected from exploitation, particularly in the agricultural sector.

469. In addition, members of the Committee wished to know what effect the Statutory Limitations Act had had regarding the exercise of the right of individuals to submit communications to the Committee under the Optional Protocol; what other complaints procedures, if any, had been negatively affected by the enactment of the Statutory Limitations Act; whether the Statutory Limitations Act left open the possibility to continue to collect information in support of claims for compensation; whether freedom of movement was restricted and derogations from the provisions of article 9 of the Covenant possible during a state of emergency; whether further training courses on human rights were foreseen for law enforcement officials and medical personnel; and whether a human rights commission had been established in Uruguay that could receive and investigate complaints. Further information was also requested concerning the operation of the Honorary National Commission for Disabled Persons; cases involving discrimination against women that had come before the industrial tribunal; and the practice of "reverse discrimination" as referred to in paragraph 26 of the report.

470. In reply, the representative of the State party said that the Statutory Limitations Act or Law of Expiry (Act No. 15,848 of 22 December 1986) had been enacted subsequent to the amnesty of 1985 at a very difficult period in his country's history following years of internal war. The Act was a fully legal action that did not suspend any of the provisions of the Covenant. Moreover, it undertook to provide compensation to the victims of human rights violations under the de facto regime and to guarantee that such abuses would not recur. In that respect, it differed from various statutes of limitations that had been adopted in other Latin American countries. Not only had the Act been adopted by an elected Parliament and declared constitutional by the Supreme Court of Uruguay, but it had also been democratically endorsed by the people of the country in a referendum held in 1989. The Act made provision for recourse to legal remedies and for claims of compensation for physical and moral damage sustained by individuals during the de facto regime. At least 34 judgements had been handed down thus far by the competent civil courts on compensation claims for involuntary or enforced disappearances and physical harassment during that period. Four of those cases were still pending, one had been dropped by the plaintiff, three had been dismissed as unfounded and in the remaining 26 cases, reparations ranging from approximately US$ 17,000 to US$ 156,000 had been awarded. No sense of impunity among members of the police or military existed as a result of the Act. Other legislation in that area included a law granting

exiled persons the right to return to Uruguay and to receive compensation for losses suffered as a result of exile and a law permitting persons deprived of their rights to return to government employment. Additionally, a recently passed law, Act No. 16,011, provided legal recourse to any citizen whose constitutional rights were violated.

471. With respect to legislation concerning states of emergency, article 31 and paragraph 17 of article 168 of the Constitution were again fully applicable and safeguarded the rights of individuals during a state of emergency. In regard to racial discrimination, Act No. 16,048 of 16 June 1989 penalizing discrimination and the incitement to racial hatred or violence had not had to be applied so far. The Act, no doubt, had a preventive effect, reinforced also by Uruguay's democratic culture and the high level of general education in the country. Moreover, article 8 of the Constitution established that all persons were equal before the law. As a consequence, there was equality of opportunity in education, the holding of public office and service in the military. Additionally, articles 5, 29 and 37 of the Constitution specifically guaranteed the freedoms of religion, thought and movement respectively and thus, in conjunction with article 8, made any formulation of discriminatory employment policies impossible in Uruguay. Ethnic minorities were fully integrated into Uruguayan society and discrimination as such did not exist.

472. Any possible discrimination against women had been eliminated by Act No. 16,051 of 10 July 1989, which made both parents the legal administrators of the assets of their children. The employment rights of women were also specifically guaranteed by law, in conformity with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the International Labour Organization. The Government had passed laws promoting preferential hiring of women in order to eliminate past inequalities. With respect to child labourers, minors under 15 years of age were not authorized to work. However, exceptions could be made for children aged 12 and over who were employed in their own family's business and minors aged 14 and over who were engaged in agricultural work. A human rights section had been established within the Ministry of Foreign Affairs with a view to investigation, follow-up and responding to international bodies dealing with human rights.

Right to life, liberty and security of person and treatment of prisoners and other detainees

473. With respect to those issues, the Committee wished to know whether there had been any complaints during the period under review of disappearances, extrajudicial executions or torture and, if so, what measures had been taken to investigate such acts, to punish those found guilty and to prevent their recurrence; what were the rules and regulations governing the use of firearms by the police and security forces and whether there had been any violations of such rules and what measures had been taken to prevent their recurrence; what measures had been taken by the authorities to ensure strict observance of article 7 of the Covenant; whether confessions or testimony obtained under duress were admissible before the courts; what were the respective roles of the Supreme Court of Justice and the National Directorate of Prisons, Penitentiaries and Detention Centres in the supervision of places of detention; what procedures there were for receiving and investigating complaints of violations of prisoners' rights; whether the Standard Minimum Rules for the Treatment of Prisoners were complied with in places of detention and whether the relevant regulations and directives were known and accessible to prisoners; how quickly after arrest a person's family was informed; and when, after his arrest, a person could contact a lawyer. Further information was requested on the maximum time-limits for remand in custody and pre-trial detention and on the measures taken by the Supreme Court in its Ruling No. 7019.

474. Members of the Committee also wished to know whether individuals could submit complaints regarding mistreatment and how such complaints were dealt with; what measures were being taken to investigate allegations of ill-treatment while in police custody, and if officials had been tried for offences against the physical integrity of prisoners; whether a police officer could return to duty while an accusation alleging mistreatment of a person in detention and, in particular, torture, was pending against him; whether decisions taken by a judge with regard to pre-trial detention could be appealed to a higher court; what was the maximum duration a person could be held in detention before being sentenced; under what circumstances a prisoner might be placed in solitary confinement; what safeguards existed to prevent detainees from being subjected to medical or scientific experimentation; whether defendants could appeal to other judges in cases in which the examining judge refused to grant bail, whether legal aid was available for such an appeal and whether there were any rules about how quickly the appeal could be heard; whether any specific measures were being taken to protect women in custody against sexual abuse; whether there were separate prisons and facilities for women providing conditions equivalent to those for men; whether there were any special measures to protect young people in custody and whether there was a high incidence of suicide in custody.

475. Responding to the questions, the representative of the State party said that there had been no disappearances, extrajudicial executions, or torture in the form of organized or institutional repression. Article 7 of the Covenant had been incorporated into law by Act No. 15,737. Isolated cases of mistreatment had been minor and had been duly investigated. Act No. 16,170 (article 58) established an agency within the police department to act as a consultative and watchdog agency for branches of the Ministry of the Interior. Its task was to report on irregularities, receive complaints and prepare summary reports as required by the Ministry. That agency had effectively assisted the Ministry of the Interior in the prevention and elimination of torture. Articles 26 and 28 of the Penal Code governed the use of firearms. No complaints of violations by police of the relevant regulations had been lodged.

476. There were no restrictions on individual freedoms, including liberty of movement. Persons could be arrested only if caught *in flagrante delicto*, or if proof of the same was offered by written order of the competent judge. The remedy of habeas corpus was guaranteed by the Constitution. Under articles 16 and 60 of the Constitution and articles 118-124 of the Penal Code, a statement made by a person in detention had to be submitted to a magistrate within 24 hours and the person arraigned within 48 hours of his arrest or be released. A person could not be held for more than 24 hours without being allowed contact with his lawyer and could communicate with his family within 48 hours unless a magistrate ruled otherwise. Confessions and testimony obtained under duress were not admissible as proof in courts of law; only testimony given before the competent judge was valid, in accordance with article 185 of the Penal Code. Government officials were required to respect all international conventions on human rights and if they failed to do so they were duly punished under domestic law. Supreme Court Ruling No. 7019 provided that the competent judge must ensure a speedy trial and if, after 120 days, no evidence had been submitted, the competent judge must explain in writing why the required action had not been taken. Moreover, under article 69 of the Penal Code, any sentence imposed had to take into account the amount of time a person had already spent in detention.

477. Act No. 15,859 ("law of prevention without imprisonment") allowed judges to decide whether or not a person accused of an offence was to be placed in preventive detention. When it could be presumed that the defendant would not undertake any further criminal action, judges usually decided to release the defendant. Regarding violence against women, a special police station staffed

entirely by women had been established to receive and investigate reports of maltreatment and abuses of women. There were also prisons for and run by women.

Right to a fair trial

478. In regard to that issue, the Committee requested information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; and on the organization and functioning of the legal profession, particularly the Bar.

479. Members of the Committee also wished to know who ultimately decided whether or not a judge was to be dismissed for violating the Constitution; whether a judge could be dismissed on the basis of a political decision of the elected Parliament; how many of the 440 judges in Uruguay were women; and whether judges, in the absence of malice, enjoyed impunity from civil or criminal process in the discharge of their duties.

480. Responding to the questions, the representative of the State party noted that Uruguay had the third highest proportion of judges to population in the world, with 15.5 judges per 1,000 inhabitants. Members of the Supreme Court of Justice were designated by the National Assembly and members of the Court of Appeals were nominated by the Supreme Court and confirmed by the Senate. All other judges were directly appointed by the Supreme Court. There were four different procedures for the designation of judges at the various hierarchical levels and they included provisions regulating the dismissal of members of the Supreme Court and the appellate courts. Members of the Bar belonged to a civil association which had been very active in the promotion of human rights.

481. Whereas judges of the Supreme Court could not serve for more than 10 years and could not be re-elected until five years had elapsed after the end of their tenure, the only limit on the tenure of other judges other than satisfactory performance was that article 250 of the Constitution set the retirement age of all judges at 70 years. The majority of judges in Uruguay were women, especially in areas that dealt with family matters and minors. In Montevideo, 27 out of the 29 family court judges were women.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participate in the conduct of public affairs, and rights of persons belonging to minorities

482. Regarding those issues, the Committee wished to know in what respect, if any, the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; what restrictions might be placed on the exercise of the right to freedom of expression and information "within the limits of the Constitution and the law"; to what extent Act No. 16,099 of 24 October 1989 was compatible with article 19, paragraph 2, of the Covenant, especially in relation to the freedom to seek, receive and impart information; what administrative requirements needed to be met by heads of news agencies, printers and editors, "*vis-à-vis* the Ministry of Education and Culture"; how the procedure described in paragraph 91 of the report regarding the exercise of the right of reply was applied in practice; whether any legislation governing the registration of trade unions and the right to strike had been enacted following accession to the relevant ILO Conventions; what factors or difficulties may have hampered the implementation and enjoyment of the rights set out in article 27 of the Covenant; and how many members of minority groups were members of Parliament.

483. Members of the Committee also wished to know what measures had been taken with respect to reported discrimination against the black minority; whether

there were any problems impeding ethnic or racial groups from continuing to enjoy their own culture and language; how the legal separation of Church and State worked in practice; whether there were any government-controlled newspapers or television channels; what limitations could be placed upon a journalist's right to professional secrecy; whether a journalist had to be a member of a professional association in order to enjoy the right of professional secrecy; why the name of a publication's printing press had to be registered and whether failure to do so was a punishable offence; whether the Bill of Rights for Trade Unions had already been adopted; and whether the failure to vote was a punishable offence and, if so, how that accorded with freedom of conscience. Further information was requested on the extent to which the Press Act permitted investigative journalism, such as in government archives; and on affirmative action legislation for minorities.

484. Responding to the questions, the representative of the State party said that no church in Uruguay enjoyed privileged treatment as compared with other churches and that, under the second Constitution, Church and State had been separated. Religion or ethnicity had no bearing on accession to Parliament.

485. Although article 29 of the Constitution guaranteed total freedom of expression without prior censorship, authors were liable for any abuses they committed. Act No. 16,099 established that deliberate dissemination of inaccurate information which seriously disrupted public order or severely damaged the economic interests of the State or harmed its credit abroad, and instigation to slandering of the nation, State or its powers, were punishable offences. There was no government-controlled press and only one government television channel, which carried cultural programming. Under article 4 of the Press Act, an unregistered newspaper could not publish. The Act in no way limited the right to criticize the Government. Heads of news agencies and printers and editors of publications were required to file, prior to the start of publication, a sworn statement giving the name and address of the publication in question, of the owner and of the printing press. That purely administrative requirement in no way affected the operation of the publication, but did provide a safeguard for any individual who might wish to sue the publication for libel.

486. With regard to the right of reply, the competent judge must call a hearing within 24 hours of receiving a written application for the right to reply publicly to published information injurious to the applicant. If the representative of the publication or the media did not appear, the judge was required to order immediate publication of the reply; if the applicant did not appear, he would lose his right ever to exercise a similar right of reply; if both attended the hearing, the judge would normally make an immediate ruling, although he could take up to three days if more time or more evidence were required. Whatever the ruling, it could be appealed to a criminal court of the second instance, which had 10 working days to reach a final decision. A recent judgement confirmed the view that both the right to express opinions and the right to reply were inherent human rights, neither having precedence over the other.

487. In connection with the journalists' right to professional secrecy, disclosure of sources by journalists was optional. If the right to professional secrecy were invoked in a court of law, the door was closed to inquiry about sources. No limitations were imposed on entry into the profession, and journalists were not required to be members of any professional organization.

488. With respect to article 27 of the Covenant, no ethnic minorities in Uruguay were denied any of their rights. People of all races and colours could rise to any station in society, and any difficulties of access or opportunity arose

along social rather than ethnic lines. Minority groups were fully integrated into the various political parties, which were the sole avenue to public office.

Concluding observations by individual members

489. Members of the Committee commended the present situation concerning human rights, the rule of law in Uruguay and the considerable progress achieved in this regard. The dialogue with the delegation had been very productive, evidencing encouraging progress by the leadership of Uruguay in promoting national awareness of democracy and respect for human rights.

490. Members of the Committee expressed their concern over the Statutory Limitations Act, which was not consistent with the provisions of article 2, paragraph 2, of the Covenant. By prohibiting the investigation of abuses, the Act impeded the exercise by the individual of his right to effective recourse, one of the most basic human rights. Payment of compensation by the Government to the victims of the military dictatorship was a positive step. However, the number of cases of reparations - 34 - was very small in view of the scale of the abuses which had taken place under the former Government. Furthermore, it was noted that a high number of communications on which the Committee had adopted its views had not been followed up by the State party. Since the Act, both in its spirit and in its application, was contrary to the provisions of the Covenant, the State party was urged to take appropriate measures, including possible amendment of the Act.

491. Members of the Committee observed with concern that, although torture was not systematically practised, there were many reports of maltreatment in police stations. The abuse of detainees should be investigated more rapidly and the perpetrators tried and convicted. Establishment of an independent and impartial authority to hear complaints would represent progress. Moreover, prison conditions needed to be improved and the lack of recreational facilities and training programmes should be remedied. It was noted that the length of the pre-trial detention period was not in conformity with article 9 of the Covenant. In current practice, it appeared that detention was the rule and freedom was the exception in direct opposition to the provisions of the Covenant, including the presumption of innocence in article 14. It was also suggested that efforts should be made to streamline the procedures of habeas corpus and amparo, thereby making it easier for the population to understand the remedies thus provided.

492. Members of the Committee expressed their concern over the firearms law and recommended that it be amended to conform with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials allowing their use only in cases of self-defence.

493. Members of the Committee noted that the coup d'état in Uruguay in 1973 could be attributed to a certain extent to a lack of guarantees in the constitution in force at that time. In order to prevent any repetition of such a massive violation, the necessary constitutional safeguards needed to be enacted. The laws regulating the freedom of expression, in particular, were worded in such a general way as to allow prosecution of persons criticizing the Government. It was suggested that the State party check all its laws against the provisions of the Covenant, using its dialogue with the Committee as a guide.

494. The representative of the State party assured the Committee that those questions which he had been unable to answer would be taken up by the appropriate authorities. While Uruguay still had a considerable distance to go before it achieved full recognition of the dignity of human beings and respect for human rights, his Government would make every effort to implement and

improve all domestic instruments aimed at full respect for human rights and looked forward to future cooperation with the Committee.

495. The Chairman of the Committee said that, with regard to the problems caused by the Statutory Limitations Act, maximum efforts should be made to remedy past abuses and violations. Uruguay was already making such efforts and he hoped that the Committee's comments would prove helpful.

Comments of the Committee

496. At its 1232nd meeting (forty-seventh session), held on 8 April 1993, the Committee adopted the following comments.

Introduction

497. The Committee welcomes the third periodic report of Uruguay covering the important changes which have taken place in that country since 1989. The Committee takes note of the useful information contained in the report concerning recent legislative changes and appreciates, in particular, that the report in general takes into account comments made by the Committee during the consideration of the State party's second periodic report. There was, however, no information in the report on several articles of the Covenant or on implication for the Covenant of the Ley de Caducidad de la Pretensión Punitiva del Estado (Law of Expiry of the Punitive Powers of the State) which is a matter of particular concern to the Committee. The report should also have included more information on the factors and difficulties encountered in the actual application of the Covenant and on the follow-up to the views adopted by the Committee on individual complaints under the Optional Protocol.

498. The Committee expresses its appreciation to the State party for having sent a high-level representative who introduced the report and responded to the many questions raised by members of the Committee. The valuable additional information provided by the State party's representative and his competence in matters concerning the Covenant facilitated an open, frank and fruitful dialogue between the Committee and the State party.

Positive aspects

499. The Committee welcomes the restoration of democracy in Uruguay and the efforts to restore respect for human rights made by the two administrations that have governed the country since the return of civilian rule. The Committee notes with satisfaction the notable progress achieved during the period under examination in bringing domestic law into line with the provisions of the Covenant. Considerable progress has been achieved with the enactment of new laws and codes and with the strengthening of democratic institutions and processes aimed at promoting and protecting human rights. Notable among these legislative achievements is the passage of the new Press Bill (Act No. 16,099 of 24 October 1989) containing guarantees for freedom of expression. The creation of a new organ "Fiscalía Nacional de la Policía" to investigate human rights abuses committed by the police is another welcome development.

500. The Committee also welcomes the holding of the first national course in Uruguay on the implementation of human rights instruments and the recent adherence by Uruguay to the Second Optional Protocol, on the abolition of the death penalty.

Factors and difficulties impeding the application of the Covenant

501. The Committee notes that the civilian Governments have had to overcome the authoritarian legacy of the military regime, while dealing, at the same time, with deeply rooted social and economic problems.

Principal subjects of concern

502. The Committee expresses once again its deep concern on the implications for the Covenant of the Expiry Law. In this regard, the Committee emphasizes the obligation of States parties, under article 2, paragraph 3, of the Covenant, to ensure that all persons whose rights or freedoms have been violated shall have an effective remedy as provided through recourse to the competent judicial, administrative, legislative or other authority. The Committee notes with deep concern that the adoption of the Law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. The Committee is particularly concerned that the adoption of the Law has impeded follow-up on its views on communications. Additionally, the Committee is particularly concerned that, in adopting the Law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations. This is especially distressing given the serious nature of the human rights abuses in question.

503. The Committee expresses a concern over the constitutional provisions relating to the declaration of a state of emergency. In particular, the Committee notes that the grounds for declaring a state of emergency are too broad and that the range of rights which may be derogated from does not conform to article 4 of the Covenant. Additionally, there is no mention in the relevant provision of the Constitution of non-derogable rights.

504. The Committee notes with concern that the regulations relating to pre-trial detention are not in conformity with article 9 of the Covenant. In this regard, the Committee underlines that, in accordance with the principle of the presumption of innocence, release should be the rule and not the exception as is the case under the current system. The Committee also notes with concern that, while there is no systematic use of torture, there are occurrences of serious maltreatment of detainees. Such occurrences indicate a lack of proper training of prison and law enforcement officials and an inadequate understanding of international standards concerning the treatment of detainees.

505. Although the new Press Law (Act No. 16,099) is in general a positive achievement, the Committee is concerned that it still includes provisions that might impede the full exercise of the freedom of expression. Foremost among these are certain provisions relating to offences committed by the press or other media, in particular articles 19 and 26 of the Law.

Suggestions and recommendations

506. The Committee emphasizes the obligation of the State party under article 2, paragraph 3 of the Covenant to ensure that victims of past human rights violations have an effective remedy. In order to discharge that obligation under the Covenant, the Committee recommends that the State Party adopt legislation to correct the effects of the Expiry Law.

507. The Committee recommends that the State party continue in its efforts to harmonize domestic laws with the provisions of the Covenant. In particular, procedures for dealing with remedies should be reviewed. The Committee also

recommends the establishment of an impartial and independent authority to monitor the application of human rights standards and to receive complaints of abuses. Greater publicity should be given to the Covenant and the Optional Protocol to ensure that the provisions of these instruments are widely known to members of the legal profession, the judiciary and law enforcement officials, as well as to the general public. Adequate follow-up should also be ensured with respect to the views adopted by the Committee on individual cases considered under the Optional Protocol.

508. The Committee suggests that detention procedures should be revised with a view to facilitating a full application of the rights provided for under the Covenant. In particular, the penal procedure should be reformed so that it is based on the principle of the presumption of innocence. The State party should ensure that adequate remedies are available with regard to habeas corpus under article 9 of the Covenant. There should be significantly less reliance on the use of pre-trial detention, particularly in view of the fact that some abuses during detention have occurred. Legislation and procedures concerning the use of firearms by police should be reviewed and additional training in human rights norms should be provided for police and other law enforcement officials.

509. The Committee suggests that special measures should be taken to protect minorities as provided for under article 27 of the Covenant.

510. With respect to freedom of expression, there should be greater freedom to seek information, as provided for under article 19, paragraph 3, of the Covenant. Additionally, the sanctions provided for under chapter IV of the Press Law are too wide and might hinder the full enjoyment of article 19 of the Covenant. In this regard, the law is not adequate.

Guinea

511. The Committee considered the second periodic report of Guinea (CCPR/C/57/Add.2) at its 1222nd to 1224th meetings, on 1 and 2 April 1993 (CCPR/C/SR.1222-1224). (For the composition of the delegation, see annex XI.)

512. The report was introduced by the representative of the State party, who explained that Guinea was involved in a democratization process. Twenty-six years of dictatorship under a single party system had shown that respect for human rights was the essential basis for peaceful conduct of political affairs. The Government believed that democracy could not exist without peaceful opposition and, accordingly, had based its constitutional structure on a multi-party system. The Basic Law, which had been adopted on 23 December 1990, was based on the Covenant and provided the basis for political competition within a context of equality, freedom of conscience, freedom of assembly and freedom of expression. Forty-two parties were competing for political power and Acts Nos. L/91/005 and L/91/006, of 23 December 1991, provided for the freedom to express divergent points of view. There were about 20 newspapers, several of which belonged to political parties, and a television station was in the planning stage. Other legal norms had been adopted to create the necessary conditions for the exercise of basic political freedoms.

513. Referring to the economic context prevailing in Guinea, the representative said that, on 3 April 1984, Guinea opted in favour of a free market economy. On 22 December 1985, with the assistance of the World Bank and the International Monetary Fund, a programme for financial and economic reform had been launched and an agreement with regard to the Enhanced Structural Adjustment Facility (ESAF) had been negotiated. The principle of political decentralization had also been put into practice through the establishment of urban and rural communes with elected councils.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family

514. With regard to those issues, the Committee wished to receive information on the extent to which the Covenant had been taken into account in the process of drafting the Basic Law; on the composition, functions and activities of the National Transition Council; on any factors and difficulties affecting the implementation of the Covenant; on any cases where provisions of the Covenant had been directly invoked before the courts; on how contradictions between domestic legislation and the Covenant were being resolved; on safeguards and effective remedies available to individuals during a state of emergency; about the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant; on progress achieved in establishing a legal framework for national institutions in charge of promoting and protecting human rights; on the nature and activities of the human rights organizations mentioned in the report; on the participation of women in the political, economic, social and cultural life of the country; and on the impact of the cultures and traditions of Guinea on the implementation of human rights contained in the Covenant, particularly in its articles 3 and 26.

515. In addition, further information was sought on the extent to which the Basic Law had thus far been implemented; on the relationship between the three branches of Government and on their respective role; on the limits placed upon presidential powers; on the circumstances under which Parliament could be dissolved; on the conditions for the holding of a referendum; on the role of the Supreme Court in cases of conflict between the National Assembly and the President; on the limits which could be set up under article 22 of the Basic Law to the exercise of the fundamental rights and freedoms; and about the restrictions on regionalism and tribalism in article 4 of the Basic Law.

516. It was also asked whether Guinea intended to maintain its reservation to article 48, paragraph 1, of the Covenant and accede to the Optional Protocol; what measures had been taken to disseminate information about the Covenant; whether non-governmental organizations had been consulted in the preparation of the report; whether the Covenant had been translated into the various national languages; whether there was any statutory prohibition of discrimination on grounds of political opinion, language, colour, national origin, property or birth; what groups of citizens could be deprived under the law of their civil and political rights; and how many legislative and constitutional referendums had been held since the adoption of the Basic Law.

517. In his reply, the representative of the State party provided detailed information on some of the provisions of the Basic Law and linked them to the corresponding provisions of the Covenant. Article 79 of the Basic Law provided for the supremacy of international law, in particular the Covenant, over domestic law and, when a discrepancy arose, the domestic law would be modified. He also drew the Committee's attention to the country's forthcoming accession to the Optional Protocol to the Covenant.

518. The National Transition Council was vested, under article 92 of the Basic Law, with legislative powers in order to prepare the organic laws that were required for the establishment of the main institutions of the Guinean State, particularly regarding the charter of political parties, the composition and function of the Economic and Social Council, the freedom of the press, and the attributes and functions of the Supreme Court and High Court of Justice. The Council would continue to function until the National Assembly was elected, at which time it would automatically cease to exist. The President of the Republic did not have absolute power and had to cooperate with the legislative and

judicial powers. He was obliged to reply to oral and written questions from the National Assembly and, in turn, the Assembly was authorized under the Basic Law to establish commissions of inquiry. In cases where the legislative and executive branches might not agree on a specific issue, the President of the Republic either accepted the National Assembly's views or dissolved the Assembly. If the same Assembly was re-elected, the President was obliged to resign. Furthermore, the Supreme Court was responsible for monitoring the legality of acts of the executive branch.

519. Referring to factors and difficulties impeding the implementation of the Covenant, the representative explained that Guinea was suffering from a shortage of financial resources and was unable to provide the required minimum conditions under article 10 of the Covenant, such as the separation of juveniles and adults, or of accused and convicted persons. The prisons were in a state of total disrepair and certain standards could not be met. Similarly, difficulties affected the implementation of article 14, paragraph 3 (b), of the Covenant.

520. Organization Act No. L/96, concerning states of siege and states of emergency, specified that measures envisaged in the Act could be invoked only during grave disturbances of public order where domestic security was endangered. Anyone subjected to those measures had the right to appeal to an advisory body presided over by a judge. Furthermore, no person could be subject to restrictive residence or local expulsion.

521. A proper legal framework was needed to guarantee the existence and operation of human rights organizations. However, due to delays in drawing up legislation, the President of the Republic had authorized the Ministry of Interior and Defence to grant recognition to properly constituted organizations. Decree No. 92/207 of the Ministry of the Interior and Defence, dated 11 May 1992, had thus authorized the establishment of the Guinean Association for Human Rights, an organization which was independent and apolitical.

522. Referring to the situation of women in Guinea, the representative explained that women held positions equal to those of men at all levels of national administration. Of the 17 members of the Government and the 7 members of the National Transition Council 3 members of each were women. There was a woman leader of a political party and a woman was public prosecutor for one of the two appellate courts in Guinea. An effort had been made to reduce the obligation to pay dowry to a symbolic level, but the question was a difficult one due to the fact that tradition and the authority of the family remained very powerful forces in Guinean society. Efforts were being made to modify those forces through education rather than legislation, not only with regard to the dowry system but also in other areas, such as those of female circumcision and polygamy.

523. All forms of discrimination were prohibited in Guinea. However, there had been a spontaneous emergence of ethnocentricity in Guinea as a result of the democratization process, and some of the new political parties reflected that fact.

Right to life, treatment of prisoners and other detainees and liberty and security of person

524. With respect to those issues, the Committee wished to know what offences were punishable by the death penalty; whether any consideration had been given to its abolition; how often and for what crimes it had been imposed and carried out since the consideration of the initial report; what were the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so,

what measures had been taken to prevent their recurrence; under what circumstances the deaths mentioned in paragraph 117 of the report had occurred; whether there had been any investigations undertaken regarding the cases of disappearances which had occurred on a widespread basis before 1988; whether there had been any complaints, during the period under review, of extrajudicial executions or torture and, if so, what specific measures had been taken to overcome difficulties faced in that regard, to investigate such cases, to punish those found guilty, and to prevent the recurrence of such acts; what the arrangements were for the supervision of places of detention and the procedures for receiving and investigating complaints; what the infant mortality rate was in Guinea and whether any progress had been made in that field since the consideration of the initial report; how quickly after arrest a person's family was informed; how soon after arrest a person could contact a lawyer; and what difficulties there were in keeping within the limits of the maximum legal period of detention in custody and of pre-trial detention.

525. Additionally, clarification was sought about measures taken to investigate 63 alleged cases of disappearances and 24 alleged cases of mistreatment of persons deprived of their liberty by prison wardens; on measures taken to investigate the crimes committed under the dictatorship, to hold the perpetrators accountable and to compensate the victims; as to whether there were any political detainees in Guinea; of measures taken to close secret detention centres, if any, set up outside the control of the public authorities; of the implementation of article 10, paragraph 2 (b), of the Covenant; and of the extent to which United Nations principles regarding the prevention of crime and the treatment of offenders had been taken into account in the formulation of national policies in that area.

526. In his reply, the representative of the State party said that the death penalty was imposed for murder, crimes against the external security of the State, illegal use of armed force, fomenting civil war, looting, and the use of torture and other barbaric acts. Guinea was a country with a Muslim majority and no consideration was being given to the abolition of the death penalty. The maintenance of the death penalty was a deterrent to crimes which threatened the lives of others. Since the consideration of the initial report, only one death sentence had been handed down and none had been carried out.

527. Although hundreds of thousands of persons had disappeared under the previous regime, it had not seemed appropriate to conduct investigations into disappearances since those responsible were now dead and it was thought unwise to reopen old wounds which might jeopardize the process of national reconciliation. Despite its lack of resources, the Government had provided some modest assistance to those who had suffered most, especially women and children and had returned all confiscated property to its rightful owners. The practice of torture persisted, unfortunately, because it was difficult to change habits acquired over a period of 26 years, particularly since the new Government had been obliged to retain some officials of the former regime. The situation was better in urban centres than in rural areas and, on the whole, torture was now the exception rather than the rule.

528. The use of firearms by the security forces was regulated by law and security officials were prohibited from using lethal ammunition in performing their duties. An inquiry had been conducted on a reported massacre by security forces, as a result of which a number of security officials had been tried and sentenced in accordance with the law. He added that, in another case, some of the students arrested in a recent protest had been found to be carrying military weapons.

529. In response to other questions, the representative said that, when an individual was arrested, the family was always informed immediately and the administrative authorities were required by law to inform local communities. Access to a lawyer was required only in the office of the examining magistrate who informed persons in custody of all their rights. Difficulties did arise in observing the maximum legal period of detention in custody, usually in remote rural areas due to the lack of communication infrastructures. A department for the administration of prisons consisting solely of magistrates had been set up within the Ministry of Justice and was responsible for ensuring that the relevant legal provisions were properly applied in prisons. Turning to the question of prison conditions, he explained that in certain prisons inmates were separated by sex, age or the nature of their offence, while in others such separation was not possible. Imprisonment was imposed on juvenile offenders between the age of 16 and 18 only if they posed a threat to public order. Otherwise, they were placed with foster families or in the care of teachers or representatives of non-governmental organizations. Government policy aimed at their rehabilitation, but that was not always easy to achieve due to the lack of resources. Secret detention centres had existed under the previous regime. However, since 1988, there had been no detention in those centres and there were currently no political prisoners in Guinea. The Government was considering reopening one of the centres as a museum and a monument to those who had lost their lives there. The overall mortality rate and the maternity mortality rate had fallen sharply since 1984, while the number of primary health care centres had increased substantially.

Right to a fair trial

530. With regard to that issue, the Committee wished to receive information on the guarantees for the independence and impartiality of the judiciary; on the composition and jurisdiction of the State Security Court, the High Court of Justice and the military courts; on details concerning actual cases considered by those courts since the consideration of the initial report; and on the implementation in practice of the right to a public trial as provided for under article 14, paragraph 1, of the Covenant.

531. In addition, it was inquired whether, in view of the fact that the National Assembly had still not been established, members of the High Court of Justice had been appointed, on a provisional basis, by the National Transition Council.

532. In his reply, the representative of the State party explained that the independence and impartiality of the judiciary were guaranteed by articles 80 and 81 of the Basic Law and Act No. 91/011, which provided for the irremovability of judges and for a special body to supervise their appointment and recruitment. The State Security Court had been abolished and replaced by the High Court of Justice, which consisted of members elected by the National Assembly under the presidency of a judge. With the promulgation of the Basic Law, military courts had also ceased to exist. The Supreme Court functioned as a means of recourse against both executive and legislative acts as well as a court of appeal. All trials were open and accessible to the public and were held during legal working hours.

Freedom of movement and expulsion of aliens, right to privacy, freedom of opinion and expression, freedom of association and assembly, and rights of persons belonging to minorities

533. In connection with those issues, the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; what had been the result of the legal proceedings initiated in the cases of arbitrary interference with the privacy of

individuals or families or with their correspondence, mentioned in paragraph 110 of the report; what laws or regulations governed the recognition of religions or religious sects by public authorities; what measures had been taken against the emergence of certain sects whose fundamentalist views appeared likely to threaten public order and social peace; what restrictions were imposed by articles 244 to 246 of the Penal Code on the freedom of opinion and expression; what measures had been adopted to ensure the plurality of press organs; what were the criteria and procedures for the registration of political parties and trade unions; what measures had been taken to facilitate the establishment of political parties and to secure political pluralism; what ethnic, religious or linguistic minorities existed in Guinea; what measures had been adopted to protect the rights of persons belonging to ethnic, religious or cultural minorities; and what had been the events mentioned in the report which had affected the relations between ethnic groups.

534. In addition, further information was sought on the implementation of the principle of mandatory voting and on any related penalties; about measures taken to ensure the holding of legislative elections despite financial problems; on allegations that members of the "Rassemblement du Peuple Guinéen" had been denied the right to freedom of assembly and that some of its members had been arrested and detained; on restrictions, if any, to the right to strike; and on the situation of the 300,000 refugees living in Guinea.

535. In his reply, the representative of the State party said that appeals against an expulsion order were permissible and did have suspensive effect. Although there were no laws governing the recognition of religions or religious sects by the authorities, articles 174 to 177 of the Penal Code dealt with the possible threat to public order posed by the activities of ministers of religious sects. Freedom of the press was guaranteed by Act No. 91/005, the only restrictions imposed being those needed to protect the dignity of the person, ensure plurality of opinion and safeguard public order and national unity. Article 256 of the Penal Code prohibited publications whose aim was to incite to crime, while article 258 prohibited the publication of pornographic material. There was a flourishing press sector with some 20 different publications.

536. The registration of political parties was governed by Act No. 91/002, which contained no limitations on or obstacles to the establishment of political parties. Appeals against a refusal by the administrative authorities to register a party could be lodged with the Supreme Court. There were now 42 parties in existence in Guinea. The legislative elections, which had been scheduled to be held at the beginning of 1991, had been delayed because of a disagreement about how the printing of ballots was to be financed. They would be held as soon as the matter was finally resolved. Under the Basic Law, it was the duty of all citizens to participate in elections, the only restrictions being those relating to age and those resulting from conviction for an offence involving the loss of civil rights. With regard to the arrest of 22 members of the "Rassemblement du Peuple Guinéen", the leaders of that political grouping had been told to await the promulgation of the Basic Law before organizing their public meeting. They had, however, openly flouted the authorities' instructions and its meetings had thus violated public order. Its members had been arrested and tried by due process of law, which included the right to a proper defence. The right to strike was recognized in both the Basic Law and the Labour Code and three major labour unions operated throughout the country.

537. While there were many different ethnic groups in Guinea, extensive intermarriage had made the country a melting pot where no minority feared for its survival. For that reason, there was little need to provide for protective measures and article 8 of the Basic Law was deemed to be sufficient for that

purpose. Some problems had occurred in the past when the crimes of the former regime had been attributed to the Malinké group, because the former President had been of that origin. For similar reasons, the Susu group tended to be blamed for the real or alleged failings of the current authorities. However, ethnic rivalry was giving way to national sentiment.

538. The representative added that the situation in Liberia had had a major impact on Guinea, which had given shelter to 485,000 refugees in 1992. Since the refugees generally belonged to the same ethnic group as their hosts, no cultural problems had arisen, but the situation with regard to sanitation, nutrition, health and the environment was becoming increasingly serious.

Concluding observations by individual members

539. Members of the Committee thanked the representative of the State party for his cooperation in presenting the second periodic report of Guinea and for having engaged in a fruitful dialogue with the Committee. They welcomed the positive steps taken in Guinea towards democracy in which human rights would be a fundamental element of State policy. They also expressed appreciation for the adoption of the Basic Law, the abolition of the State Security Court and the country's forthcoming accession to the Optional Protocol. They noted, however, that the authorities still had to deal with the legacy of the past.

540. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. Deep concern was expressed over the fact that there were still cases of torture and ill-treatment in Guinea. Concern was also expressed regarding persisting discrimination of women in certain areas; the conditions of detention of persons deprived of their liberty; the excessively long period of pre-trial detention; the absence of monitoring of places of detention; the lack of compliance with the rules and regulations governing the use of firearms by members of the security forces; and regarding the implementation of article 27 of the Covenant. Members underlined the importance of ensuring that the Covenant was widely publicized so that the general public and law enforcement officials concerned were made adequately aware of the rights recognized in those instruments.

541. The representative of the State party welcomed the Committee's cooperation in helping his country achieve its human rights goal and announced that Guinea would seek the assistance of the Centre for Human Rights in organizing a seminar in Guinea to enhance awareness of the provisions of the Covenant and to support government initiatives in that area.

542. In concluding the consideration of the second periodic report of Guinea, the Chairman thanked the delegation of Guinea for having engaged in a positive dialogue with the Committee.

Comments of the Committee

543. At its 1229th meeting (forty-seventh session), held on 6 April 1993, the Committee adopted the following comments.

Introduction

544. The Committee thanks the Government of the State party for its frank and detailed report. However, the latter focuses more on legislation than on the effective implementation of the provisions of the Covenant and contains little information concerning factors and difficulties that impede implementation of the Covenant. In replying to questions asked by members of the Committee, the

delegation of Guinea sought to supplement the written report, thereby enabling the Committee to understand better the human rights situation in Guinea.

Positive aspects

545. Since the consideration of the initial report, it should be pointed out that Guinea has adopted a basic law which has the value of a constitution and contains a title concerning fundamental rights and freedoms; the Law was adopted by referendum on 23 December 1990. The military courts and the State Security Court have been discontinued. The delegation announced that Guinea would soon accede to the Optional Protocol.

Factors and difficulties that impede implementation of the Covenant

546. According to the representative of Guinea, the legacy of the former regime, which was responsible for torturing several thousand people and for mass disappearances, has left marks and bad habits in the Administration. Instances of violations (irregular arrests and ill-treatment) are not reported because the victims are resigned. The force of tradition and custom is an obstacle to the exercise of the rights of the Covenant concerning, more particularly, customs and the family.

Main grounds for concern

547. The Committee expressed concern at the general character of the provisions of article 22 of the Basic Law which permit it to limit the rights and freedoms of the individual for reasons relating to public order. It fears that implementation of these provisions might lead Guinea to enact laws instituting restrictions on rights and freedoms that go beyond those permitted by the Covenant. The Committee expressed concern at the establishment under the Basic Law of the Supreme Court of Justice which does not seem to it to comply with the requirements of article 14 of the Covenant. Several cases of ill-treatment and torture have been reported and have remained unpunished. There have been arrests and detentions for reasons of a political nature during the period covered by the report. Peaceful demonstrations have ended in bloodshed owing to excessive use of firearms by the police. The Committee is also concerned regarding the implementation of article 27 of the Covenant.

Suggestions and recommendations

548. The Committee recommended that, during this period of major legislative change, the Government of the Republic of Guinea take account of the provisions of the Covenant with a view to introducing them into its internal legislation. It suggested, in particular, that the Government adopt detailed regulations governing firearms to enable it to respect article 6 of the Covenant and also rules applicable to police custody and detention consistent with article 9 of the Covenant. Investigations should be ordered systematically when a violation is reported. An appropriate penalty should be imposed on the guilty when they are identified. Measures should also be taken to fully implement the guarantees provided for in article 27 of the Covenant.

549. The Committee emphasized the need to develop programmes of education concerning human rights and specific programmes to be used in training law enforcement officers with the assistance, where necessary, of the Centre for Human Rights.

550. The Government was invited to promote the development of organizations specializing in the promotion and protection of human rights.

Ireland

551. The Committee considered the initial report of Ireland (CCPR/C/68/Add.3) at its 1235th, 1236th and 1239th meetings, held on 12, 13 and 14 July 1993 (see CCPR/C/SR.1235, 1236 and 1239). (For the composition of the delegation, see annex XI.)

552. The report was introduced by the representative of the State party who stated that since the publication of the report in the autumn of 1992, Ireland had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had ratified the Convention on the Rights of the Child. Following the lifting of its reservation with regard to article 6 of the Covenant, Ireland had recently acceded to the Second Optional Protocol, aiming at the abolition of the death penalty. Legislation was being prepared that would permit ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Transfer of Sentenced Persons.

553. Since the submission of the report there had been a number of developments concerning matters that were considered in the report. With regard to the "Travellers", who were ethnically Irish and, like most citizens of Ireland, Roman Catholic, but whose customs differed from those of the settled population, it was government policy that they should participate in and contribute to decisions affecting their lifestyle. In that regard, a task force which included members of the "Travelling Community" had been set up to advise, at the national and local levels, on matters of housing, health, education and employment. Concerning equality and non-discrimination, priority had been accorded to the improvement of the status of women in the workplace, at home and in public affairs, as well as to the non-discriminatory treatment of minorities and persons with disabilities, in regard to education, employment and access to goods, services and facilities - including accommodation or other premises. Concerning non-citizens, the Programme for Partnership Government included a commitment to ensure that asylum-seekers, refugees and other non-nationals would be treated in accordance with the highest international standards; all aspects of the matter would be reviewed.

554. With regard to article 18 of the Covenant, the question of religious discrimination in education was to be addressed in the current review of equality legislation. The representative pointed out that the Department of Education's Rules for National Schools discriminated neither between schools under the management of religious denominations nor between such schools and multi-denominational schools.

555. There had been a number of developments with regard to abortion-related issues that fell within the purview of articles 6, 12 and 19 of the Covenant, including an amendment to the Constitution to provide that its article 40.3.3, dealing with the right to life of the unborn and of the mother, should not limit freedom to travel between Ireland and another State, or freedom to obtain or make available, in Ireland, subject to such conditions as might be laid down by law, information relating to services lawfully available in another State. However, the substantive law in relation to abortion remained unchanged. In relation to article 23 of the Covenant, the representative recalled that article 41.3.2 of the Irish Constitution currently prohibited the enactment of legislation providing for the dissolution of marriage. A public debate on that issue had been initiated in 1992 and the matter would be put to a referendum in 1994.

556. With respect to the state of emergency, the armed conflict and generally unsettled situation in Northern Ireland continued taking a heavy toll in lives, personal injury and destruction of property, from which the Republic of Ireland itself was not immune. The security policy of successive Irish Administrations, reflected in the enactment of a number of laws since the adoption of the Offenses against the State Act in 1939, had been to oppose all forms of terrorism, whether perpetrated within the State or elsewhere. Ireland's concerns were not merely to stop the violence in the north from spreading into its own jurisdiction, but also to prevent its territory from being used as a base from which to launch attacks against the population of Northern Ireland.

557. With regard to prison-related issues, the representative pointed out that Ireland had not used imprisonment as a sanction to the same degree as other European countries. Under the Programme for Partnership Government, a review of prison policy had been initiated and would be completed before the end of 1993. The representative assured the Committee that the circumstances surrounding the suicide of any person held in custody were carefully examined in order to prevent further such tragedies. A special committee had formulated some 60 recommendations on the matter, more than half of which had already been implemented.

558. Members of the Committee expressed their appreciation both for the core document (HRI/CORE/1/Add.15) and the initial report which augured well for a constructive dialogue with the State party. With regard to human rights education, members of the Committee wished to know what steps had been taken to educate the general public about their fundamental civil and political rights; whether human rights formed part of the national school curriculum; and whether special courses dealing with the cultural, racial and gender-related aspects of human rights were provided for persons in the legal profession.

559. With respect to article 2 of the Covenant, members of the Committee wished to know what was the criterion for the inclusion of the Covenant in domestic legislation and whether the provisions of the Covenant could be directly invoked before the courts. Noting that there were a number of areas of incompatibility between the Irish Constitution and the Covenant, members of the Committee asked whether there was any mechanism for assessing the scope and application of such conflicting provisions. With regard to issues of discrimination, members of the Committee wished to know what distinctions were made between Irish citizens by birth and those who had acquired Irish citizenship by naturalization; and what was the meaning of the term "social function" as used in article 40.1 of the Constitution and whether it resulted in discriminatory treatment. Members also asked for further clarification regarding the rights of aliens in Ireland and particularly their right to own property.

560. Concerning the equality of men and women, as provided for under article 3 of the Covenant, members of the Committee wished to know whether the Executive was bound to implement the recommendations of the Council for the Status of Women; what steps had been taken to follow up the recommendations of the Committee on the Elimination of Discrimination against Women; and when would the differences between men's and women's earnings in industry be entirely eliminated.

561. With reference to article 4 of the Covenant, members of the Committee asked what the relationship was between the Offences against the State Act of 1939 and the Emergency Powers Act of 1976; whether there was still a need for special criminal courts, more than 20 years after their introduction; what rights protected by the Covenant could be derogated from under the emergency legislation; why the Government had not notified the Secretary-General of the United Nations of the state of emergency presently in force, as required under

article 4 of the Covenant; what procedures would have to be followed in order to bring to an end the present state of emergency; what special issues dealt with by the special criminal courts could not be effectively dealt with by ordinary courts; whether the extraordinary powers provided for under section 2 of the Emergency Powers Act were in conformity with article 4 of the Covenant; and whether persons detained under the Act were accorded the same safeguards as other detainees with regard to charging and early trial.

562. In connection with article 7 of the Covenant, members wished to know whether there had been any allegations of ill-treatment or the use of torture by law enforcement officials, whether there had been an investigation of such allegations, and if so, whether any charges had been lodged as a result and whether any convictions had ensued. Members of the Committee also asked if corporal punishment was permitted in educational institutions.

563. With respect to article 9 of the Covenant, members of the Committee asked whether the length of detention without charge for persons arrested under the Emergency Powers Act was still five days; and in which cases members of the Garda Siochana were entitled to initiate searches without a warrant. Members also requested clarification regarding the reports on alleged practices by the police to coerce citizens into participating in their inquiries.

564. Concerning article 10 of the Covenant, members of the Committee asked whether the Standard Minimum Rules for the Treatment of Prisoners were applied in Ireland; whether there were any plans to improve the current treatment and detention of the mentally ill under Irish law; whether prisoners had access to an ombudsman or a parliamentary committee; what mechanisms existed for the independent monitoring of the prison system as a whole; whether any steps were envisaged to increase the number of psychologists working in the prisons from its present level which was one for every 700 or 800 prisoners. Members also requested further information on complaint procedures available to prisoners; and clarification regarding efforts by prison authorities to segregate juvenile detainees from adults "as far as practicable".

565. With reference to article 11 of the Covenant, members of the Committee sought clarification as to the definition of "culpable neglect" which was one of the grounds for imprisonment of debtors in Ireland.

566. Concerning article 14 of the Covenant, members of the Committee asked how easy it was for Irish citizens to bring legal proceedings and be provided with legal aid if necessary; whether any steps were being considered to reform the present restrictive system for providing legal aid; and under what "extraordinary circumstances", as referred to in paragraph 62 of the report, an unconvicted person could be punished.

567. In regard to article 17 of the Covenant, members of the Committee asked what remedies existed for citizens whose telephone conversations had been arbitrarily intercepted by the police.

568. With respect to article 18 of the Covenant, members of the Committee wished to know how the free profession and practice of religion as provided for in article 44.2 of the Constitution could be guaranteed in view of the provisions of article 44.1; and how important religious education was in the national school curriculum.

569. In regard to article 19 of the Covenant, members of the Committee wished to know at what stage in the publication of a book the Censorship of Publications Board was entitled to examine the manuscript; whether the Board stated the

grounds for its decisions; and whether any provision was made for review of the Board's decisions by a court.

570. Concerning article 22 of the Covenant, members of the Committee wished to know the criteria for regarding a political party as legal and what were the requirements for the registration of political parties. Members also wished to know how many illegal parties there were in Ireland and the reasons for their having been declared illegal.

571. With respect to article 23 of the Covenant, members of the Committee requested further information on the rate of marital breakdown in Ireland and the consequences of the Constitution's ban on divorce. Members also wished to know whether persons living in extramarital relationships were guaranteed adequate financial and personal protection; and whether the legal definition of the family extended to the single parent.

572. Concerning article 27 of the Covenant, members of the Committee asked to what extent the minimum number of pupils required for a school to receive State funding discriminated against minority religions.

573. Responding to the questions and comments made by members of the Committee, the representative of the State party stated that the Covenant could not itself be invoked in an Irish court. A litigant could, however, invoke the implementing measure that had been enacted in the domestic legislation. In the case of many conventions and treaties, that measure was a statute enacted by Parliament in terms identical to that of the international instrument. Where the Covenant was concerned, however, that was not the case. The Government of Ireland was of the view that the essential obligation deriving from the Covenant was to give effect to the rights contained therein, but that it was not essential to do so by using the precise terminology of the Covenant in every case. The Government believed that it did indeed give effect to those rights by means of pre-existing constitutional guarantees, through laws that pre-existed the ratification but had been in compliance with the Covenant, or in a few cases, by means of legislative provisions that had been enacted with a view to giving explicit effect to specific provisions of the Covenant. The representative declared that the Covenant was, like the Irish Constitution, a living document, and that, in acceding to it, the Government had undertaken a continuing obligation to examine and improve domestic legislation in the light of its provisions.

574. In regard to powers provided for under the Emergency Powers Act, there was presently only the power to bring section 2 of the Act into force by means of a government order. Such an order was not currently in force and, therefore, neither was section 2. In connection with reviewing the need for maintaining the state of emergency, the Supreme Court had expressly reserved that question for future consideration. It was Ireland's view that the current state of emergency did not involve a breach of its obligations under the Covenant so that no derogation under article 4 was required.

575. With respect to the Special Criminal Court, the representative stressed that the Court was needed to ensure the fundamental rights of citizens and protect democracy and the rule of law from the ongoing campaign related to the problem of Northern Ireland. The Special Criminal Court differed from other ordinary courts in only two respects: that there was no jury and that instead of one judge there were three judges. Otherwise, the same rules of evidence applied and the decisions of the Court were subject to review by the Court of Criminal Appeal.

576. With regard to the reference to "social function" which qualified the general statement of equality before the law in article 40.1 of the Constitution, the intention behind that sentence was to underline that equality meant not only that like cases be treated alike, but that cases which were unalike should be treated differently. The intention was to limit the circumstances in which legislation might validly make such distinctions to those where there were "differences of capacity, physical and moral, and of social function". The representative cited a number of court decisions in which such distinctions had been made. The Government was also preparing comprehensive anti-discrimination legislation which would explicitly cover the categories of sex, marital status and parental status. Whether there was a need for constitutional amendments, as recommended by the Second Commission on the Status of Women, would have to be determined.

577. On prison matters, including the availability of segregated facilities for women and youthful offenders, the representative reiterated that prison policy was under review. In regard to psychological services available to all prisoners, the number of psychologists was being doubled. With respect to the question of imprisonment for debt, no person was imprisoned in Ireland simply for inability to pay money due. During the judicial procedures concerning the enforcement of debt, the capacity to pay had to be established before a court could order payment. Consequently, imprisonment could result only from failure to obey a court order and not from inability to pay the debt.

578. The representative stated that legal aid was available in serious criminal cases, namely, those in which there was a risk of imprisonment. In 1993, resources available for legal aid had been increased to £3.2 million from £2.6 million in 1992. The number of law centres had been increased from 12 to 16.

579. In response to questions concerning the situation of the family, the representative stated that figures for 1991 indicated that one in six births in Ireland took place outside marriage. While there was no divorce in Ireland, a significant number of persons were living in non-marital relationships. In 1986 and 1991 the number of broken marriages was estimated at 37,000 and 47,000 respectively. The actual number was probably higher since many broken marriages do not result in separation and, as well, divorces and remarriages outside Ireland were not included in the survey. In a related concern, the Irish Government supported adoption of the declaration on violence against women and the definitions and measures outlined in it. A number of steps had been taken by the Government to strengthen existing law and policy in this regard.

Concluding observations by individual members

580. Members of the Committee expressed their appreciation for the high quality of the report and the comprehensive additional information supplied by the representative in his introductory statement. Members welcomed the fact that the report had been published in an easily readable format and made available to the general public, thereby arousing increased interest among non-governmental organizations in Ireland and elsewhere. Members also welcomed the recent adherence of Ireland to the Second Optional Protocol, aiming at the abolition of the death penalty and the withdrawal of its reservation concerning article 6 of the Covenant. They expressed their appreciation for the importance attached by the State party to education in human rights and its willingness to involve non-governmental organizations in the preparation of its report.

581. Members noted that, while the representative's response to queries concerning the legal status of the Covenant within Ireland's constitutional and legal framework had proved enlightening in some respects, a number of

difficulties remained to be resolved. In particular, members expressed concern that article 29 of the Irish Constitution precluded Irish courts from giving effect to duly ratified international agreements such as the Covenant.

582. Members of the Committee noted that the Irish legal system had certain particular features which had resulted in unusually wide discretion being granted to the police, for example, in connection with arrest, detention and the use of firearms. At the same time, the Emergency Powers Act had authorized a number of actions which could be held to derogate from various articles of the Covenant. Members noted that a more thorough examination of the legislation governing the state of emergency in the country would undoubtedly prove useful and that further improvements were required.

583. Members expressed their continuing doubt as to the effect of article 28.3.3 of the Irish Constitution (concerning public safety in time of national emergency) on the exercise of human rights. While the assurance had been given that those rights were not infringed, it seemed that the article could lend itself to different interpretations. A clear enumeration of the rights which might under no circumstances be suspended would be reassuring.

584. Members of the Committee welcomed the establishment of the Department of Equality and Law Reform and other recent developments with a view to eliminating existing discrimination. None the less, the improvement of the relevant legislation currently under review as well as the implementation of a programme on the basis of recommendations issued by the Second Commission on the Status of Women were essential.

585. Members of the Committee welcomed the priority accorded by the Irish Government to the updating of domestic legislation, relating, inter alia, to the criminal justice system, the family and the treatment of refugees and asylum-seekers, so as to bring it into line with the provisions of the Covenant. In this connection, current restrictions on trade union activities and the power of workers to negotiate with employers also required further consideration with a view to some improvement. Many members also expressed concern regarding excessively restrictive legislation on abortion as well as the related issues of the situation of the family and the right to divorce.

586. Members expressed their appreciation that a review of the prison system was under way. That was particularly important as far as women and young offenders were concerned and it was hoped that the Standard Minimum Rules for the Treatment of Prisoners would be invoked in that connection. Concern was expressed at the existence of imprisonment for debt. Greater emphasis should be placed on administrative measures to ensure payment.

587. With respect to articles 18 and 19 of the Covenant, members expressed concern that blasphemy could be construed as a threat to public order and deemed a punishable offence. Members also expressed concern that censorship might on occasions be applied in an excessive manner, as for example in the seizure of personal property at Customs posts.

588. Members noted that there was room for improvement in the implementation of article 25 of the Covenant relating to the political rights of citizens, especially where members of the civil service were concerned. In this connection, ways should be devised to ensure that all members of the "Travelling Community" enjoy the right to be placed on the electoral roll.

589. Members pointed out that legal guarantees, whether national or international, were important and that, because of its dualist legal system, Ireland would continue to be beset by potential incompatibility in certain areas

between its own Constitution and laws and the provisions of the Covenant. Therefore, the State party must have the potential to resolve such incompatibility, perhaps by enacting a bill of rights that would contain the provisions of the Covenant.

590. Members emphasized that, when enacting new legislation, it was essential to ensure that it was in conformity with the Covenant. The Criminal Justice (Public Order) Bill, for example, which was currently before Parliament, included provisions which might not be found to be compatible with the provisions of article 21 of the Covenant on the right of peaceful assembly.

591. The representative of the State party said that the dialogue established with the Committee had been frank and extremely comprehensive. He confirmed the delegation's intention to give serious consideration to the Committee's observations, which had been most constructive.

592. The Chairman of the Committee expressed his appreciation to the Irish delegation for its replies to the many questions raised by the Committee. He stressed the particular importance to the Committee of maintaining a constructive dialogue with States parties. In this connection, the Committee would welcome news of any developments, prior to the submission of Ireland's next report, concerning the review of legislation, including draft bills before Parliament, in areas of concern to the Committee.

Comments of the Committee

593. At its 1259th meeting (forty-eighth session) held on 28 July 1993, the Committee adopted the following comments.

Introduction

594. The Committee expresses its satisfaction at the high quality of the report submitted by the State party, which was detailed, informative and generally well composed, and for the constructive dialogue engaged through a high-ranking delegation. The Committee appreciates, in particular, the fact that the report was published in Ireland by the Department of Foreign Affairs and made available to the public. The willingness of the State party to involve non-governmental organizations in the debate surrounding the reporting process and the openness displayed towards their critical observations were also noted with appreciation. The Committee regards those efforts as a valuable step forward in raising public awareness of the Covenant and stimulating a constructive discussion on the implementation of the human rights enshrined therein.

595. The Committee expresses its appreciation for the Attorney General's detailed introductory statement and the responses and clarifications he gave in reply to members' questions, which contributed to a constructive dialogue between the Committee and the State party.

Positive aspects

596. The Committee welcomes the adherence of Ireland to the Optional Protocol, the withdrawal of its reservation regarding the death penalty and its subsequent adherence to the Second Optional Protocol, aiming at the abolition of the death penalty, as well as the announcement that legislative preparations are under way in Ireland with a view to acceding to other major human rights instruments.

597. The Committee also notes with satisfaction the State party's efforts to review existing legislation and policy in a number of key areas covered by the Covenant. In particular, the Committee welcomes the establishment of the post

of Minister for Equality and Law Reform to coordinate institutional, administrative and legal reform aimed at combating discrimination; the review of mental health legislation by the Department of Health, with a view to updating existing laws; the review of prison policy presently being carried out under the Programme for a Partnership Government; the examination of religious education; and the creation, under the Ministry of Equality and Law Reform, of a Task Force that also includes members of the "Travelling Community" to advise on the special needs of that community.

598. With respect to the issue of gender equality, the Committee welcomes the recommendations of the Second Commission on the Status of Women aimed at eliminating direct and indirect discrimination based on sex, including, in particular, the proposed deletion of article 41.2.2 of the Constitution.

599. The Committee also notes the efforts undertaken by the State party in the area of human rights education in schools and universities.

Factors and difficulties impeding the application of the Covenant

600. The Committee recognizes that the State party has encountered problems stemming from terrorist acts related to the situation outside of its borders but, at the same time, notes with satisfaction that the rule of law has been firmly established in Ireland and that the institutions of government and public order are not under serious threat.

601. The Committee notes that not all the provisions of the Covenant have yet been fully incorporated into domestic law. It wishes, none the less, to emphasize that the international legal obligations in the Covenant have been undertaken by the State party. Accordingly, it must ensure that domestic law is amended, interpreted and applied in accordance with the obligations under the Covenant.

Principal subjects of concern

602. The Committee expresses its concern over the status of the Covenant in the domestic legal order and the lack of clarity concerning the resolution of possible conflicts between the Covenant and domestic legislation. The Committee wishes to underline that, in accordance with article 2 of the Covenant, States parties are required to give effect to all of its provisions and provide an effective remedy for any person whose rights and freedoms, as recognized in the Covenant, have been violated.

603. The Committee expresses special concern over the continuation of the state of emergency declared with the adoption of the Emergency Powers Act in 1976. The Committee notes with concern that the Emergency Powers Act, particularly section 2 thereof, provides excessive powers to law enforcement officials. The Committee also expresses its concern with respect to the Special Court established under the Offences Against the State Act of 1939. It does not consider that the continued existence of that Court is justified in the present circumstances. The measures referred to above are of a character that normally require notification under article 4 of the Covenant. The Committee notes, however, that the State party has failed to inform other States parties of any state of emergency through the Secretary-General of the United Nations, as required under article 4, paragraph 3, of the Covenant.

604. The Committee expresses its concern over the wide discretionary powers generally accorded to law enforcement officials, particularly in view of the increased number of complaints of abuse. It is also not clear that police

officials are adequately familiarized with international human rights standards, including the rights and guarantees contained in the Covenant.

605. The Committee emphasizes that access to legal assistance is an essential right under the Covenant and notes that, under the current restrictive system, a proper legal defence could not be ensured for many persons.

606. The Committee emphasizes that the segregation of juvenile offenders is required under the Covenant as well as compliance with strict standards for male and female offenders. The Committee expresses its concern over the use of imprisonment in cases of wilful refusal to obey a court order for payment of money.

607. With respect to freedom of expression and the right of access to information, the Committee notes with concern that the exercise of those rights is unduly restricted under present laws concerning censorship, blasphemy and information on abortion. The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under article 19, paragraph 2, of the Covenant. The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those offices.

608. While welcoming the extension of the definition of the family, the Committee notes that existing laws do not provide for divorce. In that connection, the Committee notes that the continued non-recognition of divorce serves only to exacerbate problems associated with the de facto termination of marriage.

609. The Committee notes with concern the existence of discriminatory distinctions between citizens by birth and those who are naturalized and the discriminatory treatment in some respects of non-nationals, including refugees and asylum-seekers. The Committee also notes that civil servants are unduly restricted with respect to their right to participate in public affairs and the right to strike.

Suggestions and recommendations

610. The Committee recommends that the State party take effective steps to incorporate all the provisions of the Covenant into law and ensure that they are accorded a status superior to that of domestic legislation. Notwithstanding that the Covenant cannot be directly invoked in the courts, the need to comply with international obligations should be taken fully into account by the judiciary. The Committee also recommends that a comprehensive review of existing legislation and practices should be undertaken with a view to ensuring their compatibility with the Covenant. In particular, guarantees against discrimination should be clearly set out and conformity with the Covenant should be ensured. Draft legislation, especially in the area of criminal justice and public security, should also be reviewed to ensure compatibility with the Covenant before its adoption.

611. The Committee strongly recommends that the State party critically examine the need for the existing state of emergency and see that the provisions of article 4 of the Covenant are being strictly observed. The need for the Emergency Powers Act and the Special Criminal Court should also be examined and all practices in that regard should conform to the obligations of the State party under the Covenant.

612. The wide discretionary powers afforded to the police should be reviewed in the light of the Covenant and of the State party's dialogue with the Committee.

The Committee emphasizes the importance of the issuance of rules and guidelines and the ensuring of strict adherence by law enforcement officials to rules and guidelines, particularly with respect to powers of search, arrest and detention and the use of firearms. The Committee suggests that adherence to those rules and guidelines should be closely monitored.

613. The Committee recommends that the State party take the necessary measures to ensure the enjoyment of the freedom of expression as set out in article 19 of the Covenant. In this regard, the Committee suggests that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship of Publications Board.

614. The Committee recommends that the State party undertake further measures aimed at achieving equality of the sexes, particularly with regard to women in law enforcement, the legal profession and the judiciary. While welcoming measures recently taken to strengthen legislation with regard to violence against women, the Committee considers that the relevant laws and protections should also extend to cohabiting couples.

615. The Committee suggests that the State party undertake additional affirmative action aimed at improving the situation of the "Travelling Community" and, in particular, facilitating and enhancing the participation of "Travellers" in public affairs, including the electoral process.

616. The Committee emphasizes that training in human rights should be systematically provided to law enforcement officials. Police should be well-acquainted with relevant international norms and standard rules including, inter alia, the provisions of the Covenant. Further measures should also be taken to ensure that the provisions of the Covenant are made widely known, particularly within the legal profession and among members of the judiciary. In general, efforts in the area of human rights education in schools and universities should be increased.

Hungary

617. The Committee considered the third periodic report of Hungary (CCPR/C/64/Add.7 and HRI/CORE/1/Add.11) from its 1240th to its 1242nd meetings, held on 15 and 16 July 1993 (CCPR/C/SR.1240, 1241 and 1242). (For the composition of the delegation, see annex XI.)

618. The report was introduced by the representative of the State party, who reminded the Committee that Hungary had undergone profound changes since the submission of its second periodic report. Reviewing the current status of legislation, the representative stated that an amendment to the Constitution and to the Act on the election of members of Parliament envisaged that Hungarian citizens living abroad might vote and, in certain conditions, be eligible for election. The representative also stated that it was planned to guarantee, in the near future, the possibility of unrestricted recourse to the courts against any administrative decision. With regard to the establishment of the Constitutional Court, which was of crucial significance in guaranteeing the rights embodied in the Covenant, its functions had already been decided by legislation adopted by the Parliament on 1 June 1993 and comprised, inter alia, verification of the conformity of domestic law with the Constitution and the international obligations entered into by Hungary. A bill had been tabled to amend the Act organizing the Constitutional Court, in order to authorize the courts to refer to it if they considered a provision of domestic legislation to be incompatible with the international obligations of Hungary. In 1993, the institution of the power of protest of the Chief Public Prosecutor or the President of the Supreme Court had been declared unconstitutional and

replaced by the review procedure, which might be initiated by interested parties against final court decisions in the case of alleged violation of certain substantive and procedural provisions.

619. With regard to article 6 of the Covenant, the Parliament had recently enacted new legislation regulating abortion, providing for stricter conditions. In respect of article 7 of the Covenant, the representative mentioned the adoption of a law amending the Act on the enforcement of punishment, which entered into force on 15 April 1993 and considerably extended the rights of prisoners. In connection with article 8 of the Covenant, the representative reported the abolition of the penalty of re-educative labour.

620. In relation to article 9 of the Covenant, a bill had been tabled in the Parliament to strengthen the rights guaranteed in this article, stipulating that anyone arrested on suspicion of having committed a criminal offence should be brought before a judge within 72 hours. Another bill would be submitted to the Parliament in the autumn of 1993 to guarantee that deprivation of liberty might take effect only following a judicial decision.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes, protection of the family and children and rights of persons belonging to minorities

621. In connection with these issues, the Committee inquired what was the position of the Covenant in the Hungarian legal system and whether individuals could invoke the provisions of the Covenant directly before the courts and other State bodies; information was requested on how a conflict between the provisions of the Covenant and domestic law would be resolved. The question was raised of the extent to which the provisions of the Covenant had been taken into account in the formulation of various new legal instruments. Information was requested on the role, mandate and powers of the Constitutional Court, including the resolution of a dispute in the event of contradictions between domestic legislation and the Covenant. Members of the Committee also requested information on the meaning of article 70/k of the Constitution guaranteeing access to the courts. The Committee inquired whether the office of the Ombudsman for Civil Rights had already been established and what powers and functions were envisaged for that office. Members also requested information on the new administrative and judicial structures and on any possible changes in the status of the magistrature. Inquiries were also made about the links now existing between the legal order and the administrative court and, in particular, the nature of the "power to protest" of the Chief Public Prosecutor. The Committee also wished to be informed of the measures taken to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol thereto, and to inform the public of the consideration by the Committee of the report of Hungary. Additional information was requested about efforts deployed to include human rights in school programmes and to secure instruction on them as part of the training of members of the police and magistrates.

622. In connection with article 4 of the Covenant, members of the Committee wished to be informed of the current status and content of the bill relating to rules applicable during a state of emergency, and the main differences compared with the system previously enforced; they asked whether the bill incorporated the provisions of article 4, paragraph 1, of the Covenant, the conditions in which a state of emergency might be decreed, and whether the new rules would comply with the principles of non-discrimination embodied in the Covenant.

623. Additional information was requested on the status of refugees and the problems which certain asylum-seekers are said to have encountered as well as acts of violence or discrimination allegedly involving foreigners. It was asked

whether legislative provisions and practical measures had been taken to prevent the resurgence of reprehensible acts committed in the past and to prevent the constitution or reconstitution of groups aiming to destroy the very idea of human rights and democracy; information was also requested on the fate of the files of the secret services that operated under the former regime and on the way in which victims of human rights violations committed in the past had been able to obtain compensation. It was also asked whether former officials incurred any discrimination, including in matters of access to public service. Information had also been requested on the status of women and the efforts to strengthen their role in the conduct of public affairs. It had been asked whether the laws establishing special protection for women did not involve the likelihood of discrimination, by automatically excluding women from certain jobs. Finally, it was asked whether Roma (gypsies) were still victims of discrimination and, if that was so, whether the authorities were considering taking measures to improve the lot of those persons.

624. With regard to article 27 of the Covenant, members of the Committee had asked for statistical information on the size of the ethnic, religious and linguistic minorities and had inquired about their status in law and in practice; they had also asked for information on the current status and content of the bill on the rights of national and ethnic minorities mentioned in paragraph 137 of the report.

625. Replying to the questions, the representative of the State party said that any international treaty had to be transformed into domestic law by means of an act of Parliament or a governmental decree. In the event of conflict between an international instrument and a domestic law, the solution depended on the position, in the hierarchy of laws, of the act by which the instrument was promulgated. If the domestic law was of the same rank or of lower rank than the act, it was annulled by the Constitutional Court. If, however, it occupied a higher rank, the Constitutional Court could only call upon the organ responsible for concluding the international agreement to correct the conflict. The wording of the legal instruments cited in paragraph 7 of the report was very close to that of the Covenant, and the preamble to several new laws contained a specific reference to the provisions of the Covenant. The functions of the Constitutional Court, whose members were appointed by the Parliament, were regulatory (verification of the conformity of laws and bills with the Constitution); the Court also had a preventive role and ensured that no unconstitutional law came into force; it could also receive complaints from individuals who considered themselves to be victims of violations of their rights as a result of the application of unconstitutional provisions, and, if appropriate, annul certain legal decisions. Article 70/k of the Constitution concerning access to the courts should be considered as a kind of guideline for the legislator.

626. The representative explained that, as a general rule, the outcome of a negative review of an administrative decision was the annulment of that decision or, in certain circumstances, its modification. The Government had set up special departments to handle appeals against administrative decisions within the framework of the Hungarian judicial system.

627. On the subject of human rights education, booklets and other publications about human rights instruments were available. Human rights formed a special subject in the curricula of Hungarian universities. Training courses on human rights were regularly organized for members of the legal profession, medical doctors and prison staff.

628. The text of the Covenant and that of the first Optional Protocol had been published in the Official Gazette. The Hungarian Centre for Human Rights played

a very important role in disseminating information on the rights set forth in the Covenant and in the first Optional Protocol which, like all other international human rights instruments, formed part of the curricula of the faculties of law. Human rights were also part of the primary education programme. The activities of the non-governmental organizations also contributed to the collective awareness of human rights standards. The public at large and the entities that had taken part in the preparation of the report would be duly informed of the consideration of the report. Furthermore, a Human Rights Commission had been established within the Parliament.

629. In accordance with Act LIX of 1993, the functions of the Ombudsman were to investigate complaints of civil rights violations, and once those violations were proved, to take measures to rectify them. The Ombudsman was required to be a lawyer elected by a two-thirds majority of the Parliament, on the proposal of the President of the Republic. The Ombudsman had powers similar to those of magistrates. In the event of violation of constitutional rights, the Ombudsman applied to the competent body for the purposes of compensation. The Ombudsman also had the power to refer to the Constitutional Court in order to ascertain the compatibility of any legislative act with the Constitution or international treaties.

630. As far as the provisions of article 4 of the Covenant were concerned, the representative stated that there were a number of deficiencies in Hungarian legislation and that a bill containing provisions which would regulate in greater detail the measures to be taken in the case of a state of emergency was under study.

631. As to the status of refugees, the statement in paragraph 14 of the report, that "persons considered as refugees shall be deemed to be Hungarian citizens for the purposes of application of law" was not entirely correct with regard, for instance, to the right to vote or employment in posts for which Hungarian citizenship was a legal requirement. The expulsion of refugees from Hungary was prohibited except for reasons of national security and public order.

632. Negative attitudes towards aliens and minorities were to be found only among small groups. Where xenophobia reached the stage of qualifying as criminal activity, the authorities would institute legal proceedings. As to the Roma (gypsies), they represented a social rather than a minority problem, and the Government had passed measures affording them financial support. With regard to women, the representative stated that although their participation in the high echelons of political life and the administration was less than might be desired, they were well represented in the legal profession where, for example, 60 to 70 per cent of all judges were women.

633. Concerning the compensation of victims of past human rights violations, investigations had been seriously hampered by the unreliability and, in some cases, non-availability of the files. Two draft bills had been tabled in the Parliament, which dealt with the disqualification from high office of persons responsible for such human rights violations. As to criminal liability for human rights violations, the Government had drafted a bill whereby prosecutions could be brought in cases where the statute of limitations did not apply, for instance, to war crimes and crime against humanity. Furthermore, as a reaction to the old system of one-party dictatorship, article 3 of the Constitution stated that parties should not exercise power directly.

634. With regard to the rights of persons belonging to minorities, the representative provided some information on the size of these minorities, the largest of which was formed by the Roma (gypsies) of whom there were 600,000. Afterwards came the German (220,000), Slovak (110,000), Croatian

(80,000-90,000), Romanian (25,000) and Serbian (5,000) minorities. There were also Bulgarian, Polish, Greek, Armenian, Ruthenian and Ukrainian minorities. On 7 July 1993, Parliament had adopted the Act on the rights of national and ethnic minorities which condemned any discrimination against the minorities. At the present time, 13 minorities complied with the criteria set by this law for defining national and ethnic minorities. The law established a distinction between the individual rights and the collective rights of the minorities. It made provision for the establishment of autonomous local authorities for the minorities. Children belonging to a minority had the right to receive education in their mother tongue in separate establishments and the law also provided that the history of the minority and the study of its traditions would be incorporated in school programmes. Special arrangements had to be made in the sphere of education and training in order to overcome the handicap suffered by the Roma (gypsy) population in those spheres. Moreover, in accordance with this law, everyone had the right to use his own language in civil, administrative and criminal proceedings, in the National Assembly and within the autonomous local authorities. The current law regulating the election of members of Parliament did not contain any provision on the representation of minorities in the Parliament, but an amendment to this law, providing for adequate representation of the minorities, had been submitted to Parliament. Finally, under a constitutional amendment of 1990, the authority of the Commissioner for national and ethnic minority rights of the National Assembly was exercised through a body consisting of a representative of each national and ethnic group. However, other kinds of bodies acting as the "ombudsman for the minorities" were currently under study.

Right to life, prohibition of slavery, servitude and forced labour, liberty and security of person and treatment of prisoners and other detainees

635. In connection with those issues, the Committee wished to know whether, in view of the decision of the Constitutional Court declaring the death penalty unconstitutional, the death penalty had been abolished, and whether consideration had been given to accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; what were the rules and regulations governing the use of weapons by the police and security forces, and how the rather broad concept of "unavoidable necessity", under which the use of firearms was permitted, was interpreted; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what concrete measures had been taken to ensure the observance of article 7 of the Covenant, and whether torture was recognized as a criminal offence; whether confessions or testimony obtained under duress could be used in court proceedings; whether any complaints mechanism existed for dealing with allegations of ill-treatment, torture or deaths of persons held in custody, and what proceedings were taken to investigate such complaints.

636. Members of the Committee also requested additional information on the circumstances under which a person may be sentenced to community service. They wished to know whether temporary compulsory medical treatment included deprivation of liberty, and under which conditions such treatment took place. They requested clarification on the reasons for extending the duration of remand in custody from 72 hours to 5 days and the period prior to a defendant being brought before a judge from 6 to 8 days, and on the meaning of the term "as soon as possible" in article 55, paragraph 2, of the Constitution. In this regard, they inquired whether the provision was compatible with article 9, paragraph 3, of the Covenant.

637. They also wished to know whether Hungarian legislation guaranteed that anyone arrested was informed at the time of arrest of the reasons for such

action, as stipulated in article 9, paragraph 2, of the Covenant. It was also asked what legislative and practical measures existed to combat the problem of drug addiction. In addition, members wished to know whether a detainee could have any recourse, comparable to habeas corpus or amparo, against arbitrary detention; what were the current status and content of the draft law governing the enforcement of punishment; what were the arrangements for the supervision of places of detention and the procedures for receiving and investigating complaints; whether young offenders and female detainees were confined in separate quarters, and whether they had equal access to educational and training facilities and open prisons.

638. In his response, the representative of the State party said that as a result of the relevant decision of the Constitutional Court, the death penalty had been abolished. Ratification of the Second Optional Protocol to the Covenant was currently being discussed in the Parliament and would hopefully be done in the autumn of 1993. The use of weapons by the police was permitted only under certain circumstances and subject to established conditions; the new Bill on the Police contained a sub-chapter on rules governing the use of firearms. Special training courses were organized for police officers in order to study the legal provisions governing the use of weapons. If the rules for the use of firearms were not respected and criminal negligence could be established, criminal proceedings could be initiated in addition to an administrative investigation.

639. With regard to the provisions of article 7 of the Covenant, the Code of Criminal Procedure had been amended in 1989 to ensure respect for personal freedom and other constitutional rights. A specific rule explicitly provided for the exclusion of any evidence obtained in violation of the provisions of the Criminal Code. The Criminal Code included several offences less serious than torture. Community service was intended to function as an alternative to imprisonment for terms of up to one year or to fines. Temporary compulsory medical treatment could be a coercive measure as an alternative to custody in remand or a penal measure for insane offenders. It was implemented in the Forensic Institute for the Observation of Mental Illness, and implied deprivation of liberty. Compulsory coercive and penal medical treatment was supervised by the Ministry of Social Welfare and administered according to provisions more or less identical to those applying to any hospital for the mentally ill. The reason for changes in the duration of remand in custody was that, as from 1989, pre-trial detention ceased to be the responsibility of the prosecutor but instead was ordered by the courts. The relevant legislation had been amended to bring it into line with article 9, paragraph 3, of the Covenant. The reason for extending the time-limit from six to eight days was that a six-day deadline did not allow time for adequate preparation of the court proceedings. Various laws dealing with detention explicitly mentioned the obligation to inform the detainee of the reason for detention. The drug problem had been serious for some years already and the Government had stepped up efforts to deal with it, both as regards detection and policing in general and as regards the education and treatment of addicts.

640. All persons held in detention who were suspected of a criminal offence had access to habeas corpus. There were only a few types of detainees for whom judicial review was not allowed under current legislation, but a draft bill would shortly be submitted to the Parliament to make adequate provision for such cases. The law on the enforcement of punishment had entered into force on 15 April 1993. It had increased the rights of prisoners, including the right to appeal against decisions by the prison institution. It also encouraged greater contact between prisoners, their families and the community at large. According to the new law, the correctional judge procedure had been more closely aligned with ordinary criminal procedure. Places of detention were supervised by public

prosecutors at least once a month. The public prosecutors considered complaints lodged by inmates and were entitled to initiate proceedings against employees of the institution in cases of suspected negligence. Detainees could also appeal to the courts against decisions ordering solitary confinement, and request less severe treatment. A complaints mechanism existed to deal with allegations of ill-treatment by the police and, since 1990, such complaints were no longer dealt with by the military courts but by the ordinary courts. Special prisons existed for juvenile offenders and females, where conditions were less strict than in other prisons.

Right to a fair trial

641. With regard to that issue, the Committee wished to know what guarantees existed for the independence and impartiality of the judiciary. They sought clarification on the status and content of the Bill on the establishment of administrative courts, which had been submitted to the Parliament in December 1989, and about the meaning of the term "quasi-offences", and asked whether they were cognizable by courts. Clarification was also requested on the absence in the Constitution and other recent Hungarian legislation of sufficient legal safeguards as guaranteed by article 14, paragraph 3, of the Covenant.

642. Members of the Committee requested further information on the tenure of judges elected to the Constitutional Court and on the position of the legal profession and on the free legal aid system in Hungary.

643. In reply, the representative of the State party said that all decisions relating to the appointment of judges and the expiry of their terms of office were taken by the President of the Republic, and that the Ministry of Justice no longer had any responsibility with regard to nominations, except for the right to appoint the presidents of county courts. In addition, the financial independence of the judiciary from the executive was guaranteed by law; the system for the promotion and remuneration of judges was governed solely by law; judges were appointed by the President of the Republic on the proposal of the Ministry of Justice with the approval of the Judicial Council; judges enjoyed immunity from prosecution and could not be arrested and taken into custody nor be the subject of criminal proceedings without the authorization of the President of the Republic. The Bill on the establishment of administrative courts had not yet been submitted to Parliament and administrative cases were thus dealt with by the ordinary courts for the time being. "Quasi-offences", which might also be termed regulatory offences or administrative infractions, were at present dealt with by administrative agencies. A bill would soon be submitted to Parliament which, if enacted, would provide for judicial review with some exceptions in respect of such offences. The situation of the legal profession in Hungary had changed considerably in the past two years. The new legislation allowed for any law graduate with professional qualifications and suitable legal premises to join the Bar. Lawyers now acted as individuals rather than as partners under the "work collectives" of the former regime, and such changes had affected the provision of legal aid; individual lawyers appointed to provide legal aid could not always be relied upon, and therefore the whole system would have to be reviewed.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

644. On those issues, the Committee wished to have further information on the restrictions that had been lifted and those that remained with regard to the right to leave and return to the country freely, particularly those applicable to persons in possession of State secrets; on how it could be determined

a priori that a person was "unlikely to integrate into society" so that he could be denied an immigration permit; on the law and practice relating to permissible interference with the right to privacy, in particular by the secret service; on registration or any other procedure relating to recognition of different religious denominations by the authorities and on the content of Law-Decree No. 17 of 1989 regulating the functioning of religious orders; on the cases in which a permit concerning the activity of the press could be refused or a publication prohibited and on the status and content of the new "more liberal" regulations awaiting consideration by the Parliament at the time of the submission of the report; on the cases in which a press organ could be fined for violation of personal rights; on the ownership of the media; on the specific conditions under which the provisions relating to the right of foreign nationals to vote in local elections were applied; and on the conditions under which a court could bar a citizen from participating in public affairs.

645. The members of the Committee wished to be informed about the criteria for the expulsion of an alien considered undesirable; the remedies available to an individual against arbitrary interference with his privacy; the principles governing the collection, storage and use of personal data held by the State; the existence of censorship in Hungary; the modifications to the law concerning incitement against the community; the meaning of the prohibition by the Act on the Freedom of Association of the establishment of organizations offending the Constitution; the present position of trade unions; and the provisions of Act VII of 1989 forbidding strikes in certain circumstances.

646. The representative of the State party, replying to these questions, said that the fundamental right to go abroad and return to the country was established in Hungarian law. Under earlier legislation it had been subject to many restrictions, and there had been many grounds on which a passport could be refused. The new law, while maintaining certain restrictions, which might be criticized, had introduced an important improvement in the right to request review by a judicial body of the authorities' refusal to issue a passport. Similarly, the new provisions represented considerable progress in that they spelt out the grounds on which a passport could be refused. The "State secrets" possession of which could be grounds for refusing someone a passport were not just military ones, but the Act of 1989 on the subject was in the process of being revised. The law concerning refusal of a residence permit to a person unlikely to integrate into Hungarian society dated from 1989; under it persons were regarded as unlikely to integrate if they had received no schooling, did not speak the language and were not familiar with Hungarian traditions and democratic institutions. The expulsion of an alien could be ordered by a court, as a penalty in addition to the basic sentence, where the person was guilty of a criminal offence; it could also be ordered by the administrative authority, whose decision could be reviewed by a court. The bill on the police and the national security forces would give the courts the power to order expulsion. The Act of 1990 on the use of certain methods by the secret service specified offences for the prevention and detection of which the security services could use devices and methods without the awareness of the person concerned. Under the draft legislation relating to the police and national security, modifications were to be made to the existing regulations. An act had been adopted in 1992 to ensure protection of personal data, particularly those described as "special", and it contained very strict provisions forbidding the collection and use of such "special" data.

647. A new act had been adopted on freedom of religion and the churches, which included a special chapter on the registration of churches or religious denominations. Registration was carried out by the county courts having territorial competence. The obligation for religious organizations to register arose from the fact that as bodies corporate they could enter into contracts.

Act No. II of 1986, amended by Act No. LXV of 1990, proclaimed the right to express opinions and publish intellectual works through the press, on condition that they did not violate the constitutional order, that they did not commit an offence or incite others to do so, that they were not contrary to public morality and that they did not infringe the rights of the individual. Under a draft act at present under consideration, the restriction relating to public morality would be abolished, as would the present power of the Procurator to suspend a publication. The Criminal Code specified the offences that could be committed through the press. Apart from criminal liability, there was also civil liability; the draft act introduced a special rule under which the press could be obliged in civil proceedings to pay damages of up to 15 million forints.

648. The ban on the establishment of associations "offending the Constitution and organs of the armed forces" could not be explained without reference to the previous political regime. The legal provisions governing the right to strike denied the exercise of that right to members of the judicial administration, the armed forces and law-enforcement bodies.

649. The right of non-nationals to vote in local elections applied to aliens resident in Hungary for at least five years who were registered on the electoral roll. The ban on electoral campaigning in the workplace was explained by the situation that had existed in the past, when the Communist Party had had cells at workplaces; the ban applied to organizations, not individuals. A ban on participation in public affairs was an additional punishment that a court was free to impose or not on any person sentenced to an enforceable term of imprisonment for a wilful offence.

Concluding observations by individual members

650. The members of the Committee thanked the Hungarian delegation for its detailed statement and for the excellent spirit in which its dialogue with the Committee had been conducted. They stressed the competence with which the delegation had described the present situation in Hungary. The members of the Committee had been able to note the efforts being made by Hungary to fulfil its obligations under the Covenant and to carry forward the process of transition on which the country had embarked. Progress had obviously been made in the protection of human rights, and many steps had been taken to adapt the Hungarian judicial system to the needs arising from the profound changes that had taken place in the country.

651. Some members of the Committee suggested that the general reservation entered by Hungary upon ratifying the Covenant should be withdrawn. They also noted that certain provisions of the Covenant had not been given constitutional status but as yet had only the force of law. Concern was in particular expressed about the order of precedence between the Constitution, the Covenant and domestic law, the compatibility of those various provisions and the role of the Constitutional Court in dealing with any conflict between them; other subjects of concern arose in connection with the provisions of articles 9 and 14 of the Covenant, which were not fully guaranteed by Hungarian law at present, particularly with regard to the maximum period of police custody and pre-trial detention; with the limitations on the exercise of the right to leave the country, which were considered to be still too numerous; with the low level of participation by women in political life; with violence due to ethnic antagonism or xenophobia; with the possible danger of discrimination inherent in some provisions of the new Labour Code; and with the fact that individuals were not able to appeal to the courts against administrative divisions.

652. The members of the Committee also stressed the importance of publicizing the provisions of the Covenant and its first Optional Protocol among the population in general and judicial circles in particular. They considered that human rights education should begin in primary school and be the subject of specific programmes at university and that a special effort should be made with regard to law-enforcement personnel.

653. The representative of the State party thanked members of the Committee for the highly constructive dialogue they had conducted with his delegation. He would transmit all the observations made by members of the Committee to the Hungarian Government.

654. Concluding the Committee's consideration of the third periodic report of Hungary, the Chairman joined with other members of the Committee in thanking the Hungarian delegation for its cooperation. Adding that he agreed with most of the comments and views put forward by members, he expressed the hope that the dialogue would continue in a spirit of cooperation.

Comments of the Committee

655. At its 1259th meeting (forty-eighth session), held on 28 July 1993, the Committee adopted the following comments.

Introduction

656. The Committee welcomes the third periodic report of Hungary, and expresses its appreciation to the State party for the constructive dialogue engaged through a high-ranking delegation. The report covered the important changes which have taken place in that country since its transition to a multi-party democracy. Although the report did not provide sufficient information on the implementation of the Covenant in practice and on the factors and difficulties affecting its implementation, the very comprehensive additional information provided in the introductory statement, and in the replies given by the Hungarian delegation to the questions raised by the Committee, has enabled the Committee to have a clearer picture of the overall situation in the country as to its compliance with the obligations under the International Covenant on Civil and Political Rights.

Positive aspects

657. The Committee notes with satisfaction that extensive reforms are currently under way in Hungary towards the development of a new legal order and the establishment of democratic institutions. The new legal framework which is emerging allows for an increasing recognition of the human rights provisions set forth in the Covenant and a better implementation of the obligations under it.

658. The Committee notes with particular satisfaction the recent adoption of a law on the rights of national and ethnic minorities; the provision according to which non-nationals permanently settled in Hungary are entitled to vote in local elections; the recently introduced legislative changes aimed at ensuring a better access to the courts; the Act on the Parliamentary Ombudsman for civil rights, as well as the draft legislation on states of emergency, which takes into account the provisions of article 4 of the Covenant. These and other recent developments clearly illustrate the commitment of the Government of Hungary to comply with its obligations under the Covenant and to establish the legal machinery for the protection and enjoyment of fundamental human rights.

Factors and difficulties impeding the application of the Convention

659. The Committee notes that remnants of the authoritarian rule cannot be easily overcome and recognizes that much remains to be done, especially in the fields of education and training to better familiarize judges, practising lawyers, law-enforcement officials, and the public at large with the rights enshrined in the Covenant. The Committee urges the State Party to intensify its efforts so as to ensure that the various problems faced during the present transitional period do not delay the implementation of civil and political rights, in particular the freedom of association and participation in the conduct of public affairs.

Principal subjects of concern

660. The Committee expresses its concern over the fact that the Constitution and domestic law do not incorporate all the rights enshrined in the Covenant, and that the status of the Covenant in the Hungarian legal system is not clearly defined. In particular, the Committee is concerned about the eventual conflict between a provision of the Covenant which has not been incorporated into the Constitution and a provision of domestic law.

661. The Committee is also concerned about the provisions of the Hungarian legislation relating to pre-trial detention and the procedure for bringing a defendant to trial and about excessive duration of pre-trial detentions. These norms do not fully conform with the relevant provisions of articles 9 and 14 of the Covenant. The absence of an administrative court is also a matter of concern; it must be noted, however, that in principle administrative decisions can be appealed to the ordinary courts and that currently there is a draft bill before the Parliament concerning the establishment of administrative courts.

662. Similarly, the Committee wishes to express its concern about the use of excessive force by the police, especially against foreigners residing in Hungary and asylum-seekers held in detention. The Committee further expresses concern about the grounds on which access to passports and travel abroad can be restricted, in particular, the provision relating to holders of State secrets.

663. Concern was also expressed about the provisions allowing for the expulsion of aliens from Hungary and the extent of discretion in immigration law. Another area of concern is the very low participation of women in the decision-making process and the conduct of public affairs.

664. The Committee finally expresses its concern over the persistent pattern of prejudice and discriminatory attitudes towards certain minorities including, in particular, the Roma (gypsies), as well as the occurrence of some incidents arising from hostility and xenophobia towards aliens.

Suggestions and recommendations

665. The Committee recommends that the State party should ensure that the provisions of the Covenant be fully incorporated into domestic law or be given direct effect. The Committee also emphasizes that the texts of the Covenant and the first Optional Protocol should be widely publicized so that the judiciary, the relevant governmental agencies, and the general public are made fully aware of the rights enshrined in the provisions of these instruments. Adequate training in human rights norms should be provided for members of the judiciary and the legal profession, as well as police and prison officials, and human rights education should be included in the school and university curricula. Positive measures should be taken to involve women in political participation and decision-making. Laws on entry, residence, detention, and expulsion of

aliens need a thorough review. The Committee also recommends that attention be paid in the present and future legislation, and in practice to ensure that any limitations on human rights are strictly in conformity with those permissible under the Covenant.

Egypt

666. The Committee considered the second periodic report of Egypt (CCPR/C/51/Add.7) at its 1244th to 1247th meetings, held on 19 and 29 July 1993 (CCPR/C/SR.1244-1247). (For the composition of the delegation, see annex XI.)

667. The report was introduced by the representative of the State party, who drew attention to the fact that for many years Egypt had had to confront situations of violence brought about by irresponsible acts by extremist groups which tried to invoke the principles of the Islamic faith in order to achieve their own political ends. Emergency measures had had to be taken by the Egyptian authorities to combat, inter alia, the acts of terrorism, but the representative specified that these measures were in conformity with the provisions of article 4 of the Covenant and respected democracy and human rights.

668. The representative of the State party also informed the Committee that after the report under consideration had been submitted, the Egyptian Penal Code was amended by the promulgation of Act No. 97/1992 which regulates the measures to combat terrorism and to protect human rights. Other legislative provisions were enacted in respect of elections to trade union executive committees, the minimum age for the employment of children, which was increased from 12 to 15 years of age, and the nationality of children born of a foreign woman married to an Egyptian. A bill had also been submitted to Parliament to enable an Egyptian woman who had married a foreigner to transmit her nationality to her children. Further, the representative stated that there was no contradiction between the provisions of the Covenant and those of the Islamic Shariah, the only distinction being that the Shariah applied in certain spheres relating to individual and family status, in which case Egyptian courts based themselves on the religious law.

Constitutional and legal framework within which the Covenant is implemented and state of emergency

669. With reference to those issues, the Committee asked for clarification on the status of the Covenant in Egypt, in particular, whether individuals could invoke the provisions of the Covenant directly before the courts, and how a conflict that might arise between the provisions of the Covenant and Shariah law could be resolved. The Committee also wished to know whether there had been any proclamations of a state of emergency in Egypt since the consideration of the initial report and, if so, what the duration of the states of emergency had been, and what rights had been derogated from during such periods; whether there was a constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant in times of emergency; whether any safeguards and effective remedies are available to individuals during a state of emergency. The Committee requested details of the activities being undertaken in Egypt to promote awareness of the provisions of the Covenant; and a description of any factors and difficulties affecting the implementation of the Covenant. It asked, in particular, what impact the cultures and traditions of Egypt had on the implementation of the rights contained in the Covenant.

670. Members of the Committee also requested information on the judgements handed down by the Supreme Constitutional Court concerning the place and status of the Covenant in Egyptian legislation as well as on the role devolving upon

this Court in the event of a conflict between a treaty and Egyptian law. Further information was also requested on the composition and operation of the State Security (emergency) Courts; on the practical implementation of the emergency legislation and, in particular, of Act No. 97 of 1992 aimed at combating terrorism; on the large-scale arrests that were recently carried out in Egypt; on the recognized competence of the Head of State to refer cases to a military court; on the competence of military courts to try civilians charged with a breach of State security; on administrative detention and, in general, on the difference between the Revolutionary Court, the military court, the court of morals and the Higher State Security Court. Members of the Committee also asked the reason why Egypt had not informed the other States parties, through the intermediary of the Secretary-General, of the proclamation of the state of emergency, as it was required to do in conformity with article 4, paragraph 3, of the Covenant. Moreover, members of the Committee wished to know whether the law of 1980, known as the "law of suspicion" which allows any individual to be arrested merely on suspicion was still in force; whether the independence of the judiciary continued to be effective in the context of the state of emergency; whether the State Security Court ruled without appeal, and the reasons why its decisions had to be ratified by the President of the Republic; and why the Egyptian Government refused to grant certain Egyptian non-governmental organizations, such as the Egyptian Organization for Human Rights, the permission necessary for them to carry out their activities.

671. In his reply, the representative of the State party said that the Covenant formed part of the domestic legislation in force in his country, thereby conferring on it a status equal to that of all other laws. In the event of a conflict between the provisions of the Covenant and those of legislation, or between the provisions of legislation and those of the Constitution, the Supreme Constitutional Court was called upon to rule and handed down judgements that were binding. He went on to say that the state of emergency in Egypt had been extended for a three-year period with effect from 1991, and that this measure had been taken in conformity with the relevant provisions of the Constitution. During the state of emergency neither the Constitution nor parliamentary activities were suspended, and the measures which the President of the Republic took to restrict freedoms had to be based on the law. In respect of pre-trial detention, the representative stated that the Attorney General was empowered to extend its duration; a detained person was informed immediately in writing of the reasons for his arrest and for his continued remand in custody and was entitled to contact a lawyer. The Emergency Act also provided all the guarantees extended to a detained person by ordinary law as well as the right for a detained person and for his family to lodge appeals. The representative also indicated that the Emergency Act did not authorize any of the measures of derogation that were prohibited in article 4, paragraph 2, of the Covenant and that measures of deprivation of liberty had been taken only in respect of persons considered to be dangerous and constituting a threat to national security. He also stated that the integration of the provisions of the Covenant in domestic law at times involved legal difficulties.

672. The representative stressed that the Covenant had special dual status in Egypt: the rights protected by it were incorporated in the constitutional texts; but more importantly, it enjoyed equal status with national legislation, following the principle that any new legislation superseded that previously in force. Accordingly, any law passed following Egypt's ratification of the Covenant which was deemed incompatible with that instrument was declared unconstitutional. The representative also explained that Higher State Security Courts were ordinary courts composed of judges from the highest echelons of the legal system, chaired by the most senior judge. Although a provision existed for the President of the Republic to appoint two officers to sit with the panel of judges, he had thus far not availed himself of that power. His ratification

of decisions taken by the Higher State Security Courts did not constitute interference in the course of justice, since the only recourse open to the President of the Republic, should he take issue with the judgement, was to refer the case back to the same court for retrial. After that retrial, the verdict would become final and no further reconsideration of the case was possible.

673. In describing the structure of the judiciary in Egypt the representative drew the Committee's attention to the safeguards and immunities which guaranteed its independence. He stated that no special courts existed in Egypt. The Revolutionary Court had been set up in 1967 to address one particular case and no similar courts had been established since that date. The military courts constituted a permanent and independent judicial system, competent to investigate crimes committed by military personnel as defined by general law. They had no competence to consider cases in which civilians were involved, except where civilians had committed crimes under ordinary law against military personnel, facilities or property. In addition, under an amendment to article 86 of the Penal Code, which was adopted to combat crimes of terrorism and under the Emergency Act, some cases of terrorism had been referred to the military courts. The Constitutional Court, upon request by the State, confirmed that referral decisions could take place under the Emergency Act.

674. With regard to Egypt's non-compliance with the provisions of article 4, paragraph 3, of the Covenant, the representative stated that this did not imply bad faith, but had been a mere omission. Authorization to the Egyptian Organization for Human Rights to exercise its activities had been refused because there were already similar non-governmental organizations in Cairo and Alexandria; the decision had been appealed before the courts and the Committee would be kept informed of any development in that connection.

Right to life, treatment of prisoners and other detainees, and liberty and security of person

675. With regard to those issues, the Committee wished to know how often, and for what crimes, the death penalty had been imposed and carried out since the consideration of the initial report, and whether any revision of the law was being contemplated with a view to curtailing the number of offences currently punishable by the death penalty. It also asked what rules and regulations governed the use of weapons by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken against those found guilty and to prevent the recurrence of such acts; what investigations had been made into allegations of torture, inhuman or degrading treatment or punishment of persons deprived of their liberty, and whether charges had been brought against the perpetrators of such acts; what measures had been taken to prevent the recurrence of such acts; what concrete measures had been taken by the authorities to ensure the observance of article 7 of the Covenant and whether confessions or testimony obtained under duress could be used in court proceedings. The Committee further asked for information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints about conditions and treatment in such places; about the legal prerequisites and the maximum time-limits for remand in custody and pre-trial detention and on the implementation in practice of these rules, in particular, how quickly after arrest a person's family was informed and how quickly after arrest a person could contact a lawyer. Information was also requested on provisions relating to incommunicado detention.

676. In addition, members of the Committee observed that under Egyptian legislation a fairly large number of offences carried the death penalty and that, recently, the number of executions reported was steadily increasing in the country, and asked the representative of the State party to comment on the

actual situation. They further wished to know what offences were punishable by death under the Anti-terrorism Act of 1992, how "terrorism", as an aggravating circumstance, was defined for the purpose of the law, whether the Court of Cassation was empowered to re-examine the facts of a case involving the death sentence which had been submitted to it for verification, and whether death sentences imposed by military courts were also subject to appeal to the Court of Cassation. Members of the Committee also referred to specific information brought to their attention by non-governmental organizations regarding allegations of torture in detention centres and severe disciplinary measures within prison establishments, and requested clarification from the Egyptian authorities in that respect as well as information on prosecution, sentences and disciplinary action concerning police or prison officers accused of offences against prisoners and, in particular, of torture. Moreover, further details were requested with regard to the prison complaints procedures, prison inspections, and the distinction between "precautionary" detention and ordinary pre-trial detention. Members of the Committee also asked how many people were actually detained under the State Security Act of 1980, how the detainees' right of access to their families was implemented, what was the substantive legal basis for imposing incommunicado detention as a disciplinary measure in the context of imprisonment and how its application was supervised.

677. In his reply, the representative stated that only the most serious crimes, such as premeditated murder, murder involving abduction or rape, and drug trafficking were punishable by death. Under the 1992 amendment to the Penal Code, terrorism had been added to the list of capital offences. In this connection, he described the elaborate procedure which guaranteed that convictions on capital charges were not flawed. He also explained that the use of weapons by the police and security forces was subject to detailed regulations and that the practice of torture was punishable under Egyptian law. Allegations of torture were investigated by the Department of Public Prosecutions and suspected offenders were referred for trial. Many such cases had been brought before the courts, resulting in some acquittals and some convictions. Cases were subsequently reviewed by independent judicial machinery. In addition, places of detention were subject to inspection by the judicial authorities, which ensured that the prescribed conditions were complied with and complaints procedures observed. The representative further referred to the specific time-limits laid down for remand in custody and pre-trial detention. The latter could be extended up to six months by a panel of three judges or more by the Department of Public Prosecutions in accordance with the provisions of the Public Order Act. Suspects had to be notified of the reasons for their continued detention and given the opportunity of contacting members of their families and their lawyers.

678. The representative added that apart from cases of aggravated homicide, drug trafficking, rape accompanied by abduction and terrorism, other offences were punishable by the death penalty, although the court could decide in favour of an alternative penalty. The death penalty was pronounced only if the judges were unanimous, and its conformity with the law and with respect for all judicial guarantees was monitored by the Court of Cassation. The representative went on to inform the Committee of the definition of terrorism given in article 86 of Act No. 97 of 1992, and he specified that the President of the Republic, availing himself of the special powers vested in him by the Emergency Act, had referred persons suspected of terrorism to the military courts. These courts respected all the judicial guarantees, including the rights of the defence. Concerning the allegations of torture, the representative drew attention to the legal provisions that prohibited and punished such a practice in Egypt, and provided statistical data concerning proceedings instituted against police officials accused of acts of torture during the period 1987-1992; the legal proceedings had concluded with 56 acquittals and 13 convictions; 13 cases were

pending. The representative also referred to the measures taken in his country to ensure that prison conditions complied with the Standard Minimum Rules for the Treatment of Prisoners. He stated that the incarceration of an individual in an establishment not prescribed by the law constituted an offence. Solitary confinement was a disciplinary measure taken in the event of disorders in the prison or of refusal to obey. Anyone arrested under the Emergency Act enjoyed the same guarantees as those laid down in ordinary legislation. Moreover, in a judgement of 2 January 1993, the Supreme Constitutional Court had declared some of the legal provisions relating to the treatment of suspects to be unconstitutional, basing itself on the principle of the presumption of innocence.

Right to a fair trial

679. In connection with that issue, the Committee wished to receive further information on the jurisdiction, composition, activities of the State Security Courts and their place in the judiciary, as well as their relationship with ordinary courts, in particular, which offences under ordinary law may be placed before the State Security Courts by the President of the Republic. It also requested information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary, in particular of members of the security courts, as well as information concerning the organization and functioning of the legal profession in Egypt. It was further asked whether a legal aid or advisory scheme existed in Egypt and, if so, how it operated.

680. In addition, members of the Committee sought clarification with regard to the provisions governing judgements *in absentia*.

681. In his reply, the representative of the State party referred to the information previously provided in connection with the application of the Emergency Act and stated that judges were completely independent of the administration. Administration of the legal profession was vested in bar associations, which organized the promotion of lawyers to levels affording access to the different courts. The rules on legal aid provided that accused persons must be assisted in court by counsel. If the defendant could not afford a defence lawyer, counsel would be appointed by the court and remunerated from public funds. Financial assistance was also provided for the conduct of civil law cases.

Non-discrimination, equality of the sexes, freedom of religion, expression, assembly and association, political rights and rights of persons belonging to minorities

682. With reference to those issues, the Committee requested information on laws and practice giving effect to the provisions of article 2, paragraph 1, and article 26 of the Covenant. Further clarification was sought on the statement, contained in the report, that the State undertakes to reconcile the duties of women towards their families with their work in society and that Egyptian legislation protects and safeguards the civil and political rights of women "in a manner consistent with their nature". They also wished to receive further information, including relevant statistical data, concerning the participation of women in the political and economic life of the country, and asked for clarification with regard to the conditions under which a child may acquire Egyptian nationality through its mother in the event she was married to a foreigner. Moreover, information was requested on the law and practice relating to the employment of minors; as well as on the law and practice relating to permissible interference with the right to privacy. The Committee further asked for comments on the main differences, if any, in the status of Islam and other

religious denominations; in particular, whether there had been any cases of discrimination against non-Muslims and, if so, what measures had been taken to prevent the recurrence of such acts. It also asked what controls were exercised on the freedom of the press and mass media; what were the restrictions on the exercise of freedom of expression as guaranteed by article 19 of the Covenant; and what were the laws and practice concerning public meetings. Information was sought on the existence and functioning of associations and trade unions and on measures that had been taken by the authorities to implement article 27 of the Covenant.

683. Members of the Committee also asked what were the significant reasons that allowed the Minister of the Interior to refuse to issue or to renew a passport, whether the deportation order mentioned in Act No. 89 of 1960 could give rise to an appeal, and what was the significance of the provision in Act No. 20 of 1936 whereby the Council of Ministers could prohibit the dissemination in Egypt of publications that excited passions. Information was also requested on the legislative provisions regulating the setting up of associations and the trade union system, as well as on those concerning the banning of associations that might constitute a danger to public order, and of political parties contrary to the objectives of Islam and of socialism. Members of the Committee noted that no information appeared in the report on the minorities that existed in Egypt since, according to the Government, the minorities formed part of Egyptian society. They pointed out in that regard that article 27 of the Covenant contained the idea that measures should be taken to protect the right of persons belonging to these minorities to enjoy their own culture, to practise their own religion and to use their own language, even when they enjoyed the same rights as the other citizens. They therefore asked whether measures had been taken by the State, in particular, to prevent discrimination against the Copts and the Baha'is. With regard to the latter, the members of the Committee stressed that they were entitled to the protection provided by article 18 of the Covenant and they asked why their marriages were not recognized and whether the children born of Baha'i parents could be registered in the same way as those born of Muslim parents. Further, members of the Committee wished to know why article 40 of the Constitution, as well as the Penal Code, omitted a number of grounds of discrimination prohibited by the Covenant, the extent to which women participated in the political life of the country, and how the Egyptian Government reconciled the laws that restricted the enjoyment of political rights with the provisions of the Covenant. The members of the Committee noted that measures had been taken in Egypt to guarantee the freedom to have a religion whereas no measure had been taken to guarantee the freedom to practise one's religion. Further, Baha'is were considered to be apostates, and apostasy was considered in Egypt as a breach of public order; in that connection, they hoped that the Egyptian authorities would consider amending the legislation concerning the various aspects of the freedom of religion, in conformity with article 18 of the Covenant and with the new general comment on this article which the Committee was in the process of finalizing.

684. In his reply, the representative referred to the Egyptian legislative provisions concerning non-discrimination and the equality of the sexes. He indicated that the State provided special protection to the institution of the family, and that it had an obligation to guarantee women ways and means of reconciling their duties towards their families and their work in society, by opening mother-and-child-care centres. Moreover, in Egypt, women had the same political, social and economic rights as men. As far as the nationality of children was concerned, he explained that Egyptian law was based on the doctrine of jus sanguinis as well as on that of jus soli. In particular, an Egyptian woman who married a foreigner was required to apply for authorization to acquire his nationality; she was permitted to retain her own. This legislation was

under review and there was a bill in existence to enable the mother to transmit her nationality to her children.

685. The representative also stated that, in conformity with Egyptian law, the minimum age for the employment of minors was 15 years of age, that private life was protected by the same guarantees as the right not to be subjected to torture, that guarantees were provided for the freedom of all religions, without discrimination, apart from issues related to the family and marriage, which were regulated by the precepts of each religion. He went on to list the guarantees for and restrictions on the press and media in Egypt provided under an amendment to the Constitution which entered into force in 1980. He pointed out that rights and freedoms in that area could give rise to examination by the administrative authorities, in so far as they had to issue authorizations. In respect of the existence of associations and trade unions in Egypt, he referred to Act No. 100 of 1992 concerning elections to the various executive committees of trade unions. With regard to the implementation of article 27 of the Covenant, the representative stated that Egypt was not acquainted with the phenomenon of minorities, and that all Egyptians were equal before the law.

686. In addition, the representative of the State party stated that limitations concerning the right to leave the country and to return to it were provided for by the law. Recourse to the administrative courts was available in cases of arbitrary decisions. He also pointed out that a foreigner subjected to a deportation order had the right to resort to the courts and to receive compensation where appropriate; the right of the Council of Ministers to prohibit publication of foreign materials of a salacious nature, was subject to appeal; the formation of trade unions was subject to the same controls as were provided for in the Covenant with a view to safeguarding public order and national security; the provisions governing the establishment of political parties were administrative procedures and were subject to appeal; the setting up of political parties on a religious, class or discriminatory basis was prohibited; women enjoyed equal rights with regard to elections, nomination to public office and decision-making.

687. The representative further stated that it was not a criminal offence to change one's religion, provided that there was no conflict with the provisions of the Penal Code designed to protect divinely revealed religions and their practices. Freedom of religion existed in Egypt to the extent that it did not encroach on other religions and faiths.

Concluding observations by individual members

688. Members of the Committee welcomed the report of Egypt and expressed their thanks to the representatives of the State party for their cooperation and their efforts in replying to the many questions raised during the consideration of the report. They were of the view that the renewed dialogue with the State party had been useful and had helped the Committee to evaluate the situation in Egypt, including the compatibility of domestic legislation with the Covenant as well as factors and difficulties preventing the implementation of the Covenant in Egypt.

689. Members of the Committee regretted, however, that the report had been submitted four years behind schedule, that it had not been drawn up in accordance with its guidelines for the presentation of State party reports and that the information contained in the report had not been organized following the sequence of the articles of the Covenant. While the report provided comprehensive information on Egyptian legislation and a useful comparative analysis of the legislation in respect of the provisions of the Covenant, it did not contain information on practice relating to the implementation of the Covenant and the actual enjoyment of human rights in Egypt or difficulties in

that regard. Consequently, it was extremely difficult for the Committee to arrive at a fair assessment of the really important issues. Members of the Committee felt that statistical information would have been particularly useful with regard to certain important issues such as the imposition of the death penalty, the allegations of torture, the prosecution and actual punishment of the perpetrators of acts of torture, and the participation of women in the conduct of public affairs.

690. Members of the Committee noted that a state of emergency has been in force in Egypt without interruption since 1981 and regretted that Egypt had not informed the other States parties to the Covenant, through the Secretary-General, of the provisions from which it had derogated and of the reasons by which it was actuated, as specifically required by article 4, paragraph 3, of the Covenant. They also observed that the state of emergency in Egypt seemed to be a permanent rather than an exceptional situation. Moreover, certain powers granted to the President of the Republic under the Emergency Act were subject of concern, such as the ratification of judgements handed down by state security (emergency) courts, which may influence the independence of the judiciary, or the possibility of referring judicial cases to military courts. In this connection, members of the Committee considered it necessary to have a clear indication of the human rights affected by the state of emergency and the extent to which they had been affected.

691. Members of the Committee also expressed concern at the very strict measures taken by the Egyptian Government to combat terrorism in the country. They pointed out that measures to combat terrorism should not prejudice the enjoyment of fundamental rights enshrined in the Covenant, particularly, its articles 6, 7 and 9. Law No. 97 of 1992, adopted to combat terrorism, contained provisions which were contrary to articles 6 and 15 of the Covenant. The definition of terrorism contained in the law appeared to be very broad and should therefore be reviewed by the Egyptian authorities, especially in view of the fact that the anti-terrorism law had enlarged the number of offences punishable with the death penalty.

692. Furthermore, members of the Committee noted that the long duration and conditions of police custody and administrative detention in Egypt exposed accused persons to torture and ill-treatment by security forces, as demonstrated by numerous allegations reported by reliable non-governmental sources of information. In this connection, they regretted that Egypt did not provide adequate information in the body of the report on investigations undertaken and penalties meted out to perpetrators of torture and on compensation and medical rehabilitation of victims of torture.

693. They also expressed the view that the Egyptian authorities should establish a closer and constructive dialogue with non-governmental organizations active in the field of human rights, elaborate training programmes on human rights specifically addressed to public officials, and pay particular attention to the protection of the rights of detainees. Measures were also necessary to guarantee the rule of impartiality and the right of appeal in accordance with article 14 of the Covenant.

694. Members of the Committee observed that there were still many instances of discrimination against women in Egypt which were contrary to article 3 of the Covenant. In addition, they expressed particular concern at the restrictive legal provisions existing in Egypt with regard to freedom of thought, conscience, religion, assembly and association which affected various religious communities or sects, such as the Baha'is. Equally, general concern was expressed at the denial by the Egyptian authorities of the existence in the country of ethnic, religious or linguistic minorities. Pointing out in this

connection that to deny the existence of minorities on the grounds that persons belonging to them enjoyed all the rights to which all citizens of the country were entitled, was to confuse two entirely separate issues.

695. Members of the Committee expressed the view that Egypt should examine carefully the comments and observations made during the consideration of Egypt's second periodic report in order to study and adopt legal and practical measures ensuring full and effective implementation of all the provisions of the Covenant. In addition, they hoped that the many questions and requests for information which had remained unanswered during the debate would find exhaustive replies in the next periodic report.

696. The representative of the State party assured the members of the Committee that his delegation had taken due note of their remarks which would be studied in detail. Every effort would be made to ensure that the next report made specific reference to the practical application of the provisions of the Covenant and would be presented in accordance with the guidelines established by the Committee. Statistics, particularly regarding the application of the death penalty, would also be provided in due course.

697. In concluding the consideration of the second periodic report of Egypt, the Chairman thanked the Egyptian delegation for its efforts to respond to the many difficult questions which had been raised and stressed the spirit of cooperation which had animated the Committee in its dialogue with the Egyptian representatives.

Comments of the Committee

698. At its 1260th meeting (forty-eighth session), held on 29 July 1993, the Committee adopted the following comments.

Introduction

699. The Committee welcomes the report of Egypt and the willingness of the Government of the State party to continue the dialogue with the Committee reflected by the high level of the delegation. It regrets, however, that the report has been submitted four years behind schedule, that it has not been drawn up in accordance with its guidelines for the presentation of State party reports (CCPR/C/20/Rev.1) and that the information contained in the body of the report has not been organized following the sequence of the articles of the Covenant. While the report provides comprehensive information on the legislation of Egypt and has an annex attached to it which contains a very useful comparative analysis of the legislation in respect of the provisions of the Covenant, it provides very little information on practice relating to the implementation of the Covenant and the actual enjoyment of human rights in Egypt or difficulties negatively affecting it. The Committee feels that further information, especially statistics, would have been particularly useful with regard to certain important issues such as the imposition of the death penalty, investigations of allegations of torture, the prosecution and actual punishment of the perpetrators of acts of torture, maltreatment and abuse of firearms. Statistics on the participation of women in the conduct of public affairs would also have been appreciated.

700. The Committee thanks the State party for the core document (HRI/CORE/1/Add.19) drawn up in accordance with the consolidated guidelines for the initial part of State party reports to be submitted under the various international human rights instruments (HRI/1991/1).

701. The Committee also pays tribute to the effort of the delegation of Egypt to provide information and explanations useful for a better understanding of the situation with regard to the implementation of the Covenant in the State party. The Committee takes note of the information on the status of the Covenant in Egyptian legislation even though certain clarifications are still needed with regard to the harmonization of domestic legislation with the Covenant, relating in particular to the state of emergency and certain provisions of the Covenant.

702. The delegation and the Permanent Mission of Egypt to the United Nations Office at Geneva informed the Committee about the content of the Presidential Decree of 9 December 1981 on the ratification by Egypt of the Covenant. The Committee regrets that it had no opportunity to discuss with the delegation the exact meaning of the Decree, which was belatedly brought to its attention.

Positive aspects

703. The Committee welcomes the renewed positive dialogue with the State party, which has helped the Committee to evaluate the situation in Egypt, including compatibility of domestic legislation with the provisions of the Covenant as well as factors and difficulties affecting the implementation of the Covenant in Egypt. The Committee acknowledges the State party's firm commitment to the principles of the rule of law and democracy.

Factors and difficulties impeding the application of the Covenant

704. The Committee notes that the state of emergency in force in Egypt without interruption since 1981 constitutes one of the main difficulties impeding the full implementation of the Covenant by the State party. In June 1991, the state of emergency was extended until June 1994. In this connection, the Committee regrets that Egypt has not informed the other States parties to the Covenant, through the Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated, as specifically required by article 4, paragraph 3, of the Covenant. The delegation, however, assured the Committee that this had happened quite inadvertently.

Principal subjects of concern

705. The Committee expresses concern at the many severe measures taken by the Egyptian Government to combat terrorism in the country. It is aware that the increasing number of terrorist acts especially in the last 12 months have created a dramatic situation in the country. However, recognizing that the Government has a duty to combat terrorism, the Committee considers that the measures taken to do so should not prejudice the enjoyment of the fundamental rights enshrined in the Covenant, in particular, its articles 6, 7 and 9. The Committee is particularly disturbed by the adoption in 1992 of law No. 97 on terrorism, which contains provisions contrary to articles 6 and 15 of the Covenant. The definition of terrorism contained in that law is so broad that it encompasses a wide range of acts of differing gravity. The Committee is of the opinion that the definition in question should be reviewed by the Egyptian authorities and stated much more precisely, especially in view of the fact that it enlarges the number of offences which are punishable with the death penalty. The Committee underscores that according to article 6, paragraph 2 of the Covenant, only the most serious crimes may lead to death penalty.

706. The Committee also expresses concern at the long duration of the state of emergency in Egypt. Moreover, under the Emergency Act, the President of the Republic is entitled to refer cases to the State security courts, to ratify judgements and to pardon. The President's role as both part of the executive and part of the judiciary system is noted with concern by the Committee,

notwithstanding that in the matter of appeal it was explained that it would act only to reduce sentences. On the other hand, military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.

707. In addition, concern is expressed by the Committee about the duration and conditions of police custody and administrative detention in Egypt which are likely to expose accused persons to torture and ill-treatment by the police and security forces, as demonstrated by numerous allegations reported by reliable non-governmental sources of information. In this connection, the Committee regrets that Egypt did not provide it with adequate information on investigations made and penalties applied to perpetrators of torture and on compensation and medical rehabilitation of victims of torture, though some additional information was given by the representative of the State party in his final remarks.

708. The Committee also expresses concern about the multitude of special courts in Egypt. From the point of view of legal consistency in the judicial procedure and procedural guarantees it is important that special courts exist as an exceptional measure, if at all.

709. Furthermore, the Committee is worried about restrictive legal provisions existing in Egypt with regard to freedom of thought, conscience, religion, assembly and association. Restrictions not in conformity with article 18 of the Covenant regarding various religious communities or sects, such as Bahai's, are a matter of particular concern. Equally, general concern is expressed by the Committee at the denial by the Egyptian authorities of the existence in the country of religious or other minorities as well as the existence in certain laws of provisions concerning penalties of imprisonment with compulsory labour for political offences. There are, in addition, many areas where the law discriminates against women and restricts them in the equal enjoyment of rights and freedoms.

Suggestions and recommendations

710. The Committee recommends that the State party should examine carefully the comments and the observations it has made during the consideration of Egypt's second periodic report in order to consider and adopt legal and practical measures to ensure effective implementation of all the provisions of the Covenant. In addition, many questions and requests for information which have remained unanswered during the debate should find exhaustive replies in the next periodic report. The Committee also recommends that the Egyptian authorities should establish a closer and constructive dialogue with non-governmental organizations active in the field of human rights, and elaborate training programmes on human rights specifically addressed to public officials. The Committee recommends that the State party bring its legislation into conformity with the provisions of article 6 of the Covenant and, in particular, limit the number of crimes punishable by the death penalty. The Committee also recommends that the State party pay particular attention to the protection of the rights of those who are arrested or detained.

Bulgaria

711. The Committee considered the second periodic report of Bulgaria (CCPR/C/32/Add.17) at its 1248th to 1250th meetings, held on 21 and 22 July 1993 (CCPR/C/SR.1248-1250). (For the composition of the delegation, see annex XI.)

712. The report was introduced by the representative of the State party, who informed the Committee of the radical changes that had taken place in Bulgaria

since November 1989 during the country's transition from a totalitarian system to a democratic regime. He stressed that there had been a kind of peaceful revolution, which had made the process of democratization irreversible on the basis of respect for the rules and principles of parliamentary democracy, human rights and fundamental freedoms.

713. All those changes had radically and positively modified the political, social and legal context in which Bulgaria gave effect to its obligations under the Covenant. That favourable context contributed in particular to filling the gap which had widened under the totalitarian regime between the law and its enforcement in the field of human rights. The implementation of the Covenant was nevertheless encountering some difficulties in Bulgaria as a result of: the impact of constant political confrontation on human rights, respect for which did not depend on ideological or political considerations; the continuing existence of ethnic tensions, even though they were no longer the same as they had been before 1989; the deep economic crisis; and the external debt of US$ 13 billion left behind by the former regime, as well as the strict enforcement of the sanctions which had been decided by the United Nations against Serbia and Montenegro and which had already led to losses for Bulgaria of over US$ 4 billion. The increase in unemployment, inflation, the inadequate income of the majority of the population and the alarming increase in crime, especially among persons belonging to certain ethnic groups, all accounted for the very high social cost of the reforms under way and inevitably affected human rights.

714. In view of that difficult situation, the National Assembly had had to give priority to some categories of laws, mainly economic and social, and to delay the adoption of other texts which had been regarded as less urgent. At present, the National Assembly was considering over 500 bills, many of which related to human rights issues.

Constitutional and legal framework within which the Covenant is implemented, non-discrimination and equality of the sexes

715. With regard to those issues, the Committee wished to know what factors and difficulties impeded the implementation of the Covenant in Bulgaria in view of the changes which had taken place in the past few years; to what extent national legislation and practice fully conformed to the Covenant with regard to the status of foreigners; whether the provisions of the Covenant had been invoked by individuals before the courts; how conflicts between provisions of the Covenant and domestic law were being resolved by the Constitutional Court; whether the new Penal Code had been adopted; what measures had been taken to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol, particularly among the various minority communities in their own languages. The Committee also requested information on the ethnic, linguistic and religious minorities living in Bulgaria and the assistance given to them to preserve their cultural identity, language and religion; on whether the members of the Turkish minority who had fled the country after 1984 had had the possibility of coming back to Bulgaria and receiving compensation; and on the current situation of the Roma (Gypsies) in Bulgaria.

716. Members of the Committee also asked about the place of the Covenant in the domestic legal systems; the role and powers of the Constitutional Court; whether the Bulgarian authorities were planning to establish an institution comparable to that of an Ombudsman's office or a national human rights commission, as recommended by the World Conference on Human Rights; whether Bulgaria was considering the possibility, as also recommended by the World Conference, of setting up a national institution which would, _inter alia_, provide instruction and training for the staff of law enforcement agencies and the judicial

services; whether the violations of basic rights which had taken place under the communist regime had been investigated and prosecuted and whether the persons responsible had been identified and punished; and whether the Bulgarian authorities intended to review their legislation, especially the provisions of article 57 of the Constitution, to remove incompatibilities with article 4 of the Covenant.

717. With regard to equality between men and women, members of the Committee requested detailed statistics, particularly on the number of women who held high-level posts, especially in the legal profession.

718. As to the question of minorities, members of the Committee wanted to know whether the Bulgarian Government was considering the adoption of general legislation recognizing certain specific rights or some degree of autonomy for minorities; whether the Government had taken the urgent steps necessary not only to put an end to racial hatred, but also to guarantee minorities and the Roma (Gypsy) population, in particular, full enjoyment of the rights provided for in the Covenant; and why the massive exodus of Bulgarians of Turkish origin to Turkey was continuing, although the restrictions imposed by the former regime had been lifted and the new Constitution offered all guarantees to Bulgarian citizens.

719. Replying to the questions raised, the representative of the State party said that the 1972 Stay of Foreigners in Bulgaria Act had been amended several times in the past 20 years and that it was now fully in keeping with the provisions of the Covenant; the regulations giving effect to it still give rise to some problems, but they should be solved by means of a draft amendment to the legislation on foreigners that had been submitted to the National Assembly. The reports of decisions handed down by the Supreme Court in the past two years did not refer to any case in which the provisions of the Covenant had been invoked. The Constitutional Court had, however, ruled on several occasions on conflicts between internal law and the rules of international law, especially the provisions of the Covenant. With respect to the place of the Covenant in the domestic legal order, the representative said that international instruments took precedence over conflicting municipal legislation but not over the Constitution. It was essential in this connection that international instruments had been legally ratified, promulgated and published. He provided information on the status of the Constitutional Court within the domestic judicial system and explained that the Court could act on an initiative from one fifth of the members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Chief Prosecutor. The issue of the establishment of an Ombudsman's office had been discussed at length during the drafting of the Constitution, but it had been decided not to create such an institution for the time being. The Parliamentary Human Rights Commission exercised certain functions and assumed certain duties that resembled those of an Ombudsman. So far, very few laws had been adopted in the field of human rights. The National Assembly should decide within the next 12 months on over 45 bills relating to human rights, including the Penal Code.

720. The representative indicated that the texts of international human rights instruments were published in Bulgarian in the Official Gazette, as well as in a number of publications prepared with the assistance of the United Nations Centre for Human Rights. With regard to demographic composition, he said that Bulgaria had 8,473,000 inhabitants, including 7,200,000 Bulgarians, 800,000 Turks and 280,000 Roma (Gypsies). The other minority groups numbered 90,000. As to religion, 87 per cent of the population was Christian, mainly Orthodox, and 12.7 per cent was Muslim.

721. As far as equality between men and women was concerned, the representative said that Bulgarian legislation was in conformity with article 3 of the Covenant, but that practice showed that women were in fact at a disadvantage in many spheres of life.

722. With respect to article 4 of the Covenant, the representative pointed out that, in accordance with article 57 (3) of the Constitution, the exercise of individual civil rights could be temporarily curtailed, following a proclamation of war, martial law or a state of emergency.

723. With regard to ethnic minorities, he pointed out that at present no specific legislation relating to those groups existed in Bulgaria, but that the possibility of introducing such legislation was being considered. He noted that considerable progress had been made with regard to the re-establishment, realization and protection of the rights of minority ethnic, linguistic and religious communities since November 1989. Particular attention had been paid to compensation for the disastrous effects of measures of repression and attempts to assimilate Bulgarian Turks. A broad range of legislative and administrative measures had been adopted in order to right the wrongs that had been done. Religious freedoms had been fully restored and all religions could be practised without hindrance. Children who belonged to minority linguistic groups could now study their mother tongue in public schools for four hours a week. Books and magazines in the languages of the various minority groups were freely published and circulated. He also described the current situation of the Roma (Gypsies), indicating, for example, that they had been the hardest hit by the serious economic crisis and that their level of education was the lowest and their unemployment and infant mortality rates were the highest. Unemployment and poverty drove many of them to alcoholism and crime. Despite the efforts being made, the authorities still had not been able to improve their situation.

Right to life, treatment of prisoners and other detainees, forced labour and liberty and security of person

724. With regard to those issues, the Committee wished to know what had been the outcome of the discussion before the National Assembly on the abolition of the death penalty; what were the rules and regulations governing the use of weapons by the police and security forces; what concrete measures had been taken to ensure the observance of article 7 of the Covenant; whether the Standards and Minimum Rules for the Treatment of Prisoners were complied with and whether these provisions had been made known to law enforcement officials. Members also sought further information on the compatibility of the procedural rules on detention described in paragraphs 78 and 85 of the report and with article 9, paragraphs 3 and 4, of the Covenant; on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; and on the operation of the Liability of State for Harm to Citizens Act.

725. Additionally, members of the Committee requested further clarification regarding "crimes affecting society in general" and "crimes against the State", for which the death penalty could be imposed. Referring to reports received from non-governmental organizations, members wished to receive information on alleged cases of ill-treatment, especially of members of the Roma (Gypsy) community; on police violence in Pazardynik and the outcome of investigations that may have been carried out in that respect; and what measures had been taken to prevent a recurrence of such incidents.

726. Members expressed concern at the apparently excessive powers wielded by the prosecutor's office, noting that in many instances the prosecutor was both party and judge. They also wondered why the prosecutor was not required to seek

authorization from a magistrate before detaining a person - a practice in apparent violation of the provisions of the Covenant, as well as of the European Convention on Human Rights, to which Bulgaria was a party - and wished to know whether any measures were envisaged to remedy that situation.

727. With regard to article 10 of the Covenant, members requested information on detention in mental institutions, on the rules applicable in such cases and on guarantees available to persons so detained.

728. Replying to the questions raised, the representative of the State party explained that the abolition of the death penalty had been the subject of much debate in the National Assembly in connection with the drafting of the Constitution and it had been decided that that issue should be resolved when a new Penal Code would be drafted. As a result, there was a moratorium on executions, pending the introduction of new legislation. In accordance with article 25 of the police regulations, weapons could be used by the police only as a last resort, for example, in cases of self-defence, in order to detain a person who was regarded as a threat to public safety or in cases of armed resistance. The Council of Ministers had recently presented a bill for amending the police regulations, which would bring provisions relating to the use of weapons more into line with the Covenant. With reference to article 7 of the Covenant, the representative stated that there had been no recorded cases of torture or cruel, inhuman or degrading treatment in recent years.

729. The representative said that he did not have any statistics on the number of persons detained in psychiatric establishments, but explained that, for psychiatric detention, there had to be a very clear report by the prison medical service.

730. Referring to article 8 of the Covenant, he said that there was no forced labour in prisons and that prisoners were free to decide whether or not they wanted to work. The correctional labour mentioned in paragraph 70 of the report described the situation of persons who had committed minor offences and who, on conviction, were sentenced to work for between 3 and 12 months, but at their regular place of work and for reduced wages.

731. Detention was applied, in exceptional circumstances, for crimes subject to more than 10 years' imprisonment or the death penalty and in respect of persons accused of lesser crimes, where it seemed likely that they might escape or commit other crimes. Detention ordered by the investigating authorities was generally subject to the prosecutor's approval. In 1990, article 152 of the Code of Criminal Procedure had been amended to the effect that any person detained might appeal against the detention order before a court of law, irrespective of the source of the detention order, thus bringing it in conformity with the appeals procedure envisaged under article 9, paragraph 4, of the Covenant.

732. The representative informed the Committee that the head of the prison service and the Minister of Justice were responsible for supervising penitentiary establishments. Other places of detention were supervised by the directors of the institutions in question and were inspected by local prosecutors. Court officials had access to prison establishments to investigate complaints and take any action deemed necessary. The Standard Minimum Rules for the Treatment of Prisoners had been translated into Bulgarian and were available in public libraries.

733. The aim of the Liability of State for Harm to Citizens Act was to compensate citizens for damage caused by illegal acts on the part of the executive or the judiciary. The provisions of the Act were most frequently

invoked in respect of the latter in cases of unlawful detention or when prison sentences were longer than necessary. Compensation for other types of damage during detention in concentration camps or deportation was covered by the Act on Political and Civil Rehabilitation of Persons Repressed during the Totalitarian Regime because of their Origin, Political or Religious Persuasion.

Right to a fair trial

734. In regard to that issue, the Committee asked what was meant by "the judiciary power" in paragraph 19 of the report; what were the guarantees for the independence and impartiality of the judiciary and what were the provisions governing the tenure, dismissal and disciplining of members of the judiciary; and whether the Supreme Administrative Court had been established.

735. Having noted that, according to paragraph 120 of the report, special courts for minors did not exist in Bulgaria, members asked whether the possibility of establishing such courts had been discussed in the context of the reform of the judicial system. They pointed out that the statement contained in paragraph 77 of the report seemed incompatible with the presumption of innocence and requested clarification on that matter.

736. The representative of the State party declared that judicial power was exercised by three bodies, namely, the courts, the prosecutor and the investigating authorities. The courts ensured the administration of justice in the country; the prosecutors ensured that the laws of the land were observed; and the investigating authorities conducted preliminary inquiries into crimes. Bulgarian legislation recognized the importance of independent and impartial courts as a means of ensuring respect for human rights and fundamental freedoms. Judges, prosecutors and magistrates were granted lifelong tenure three years after their initial appointment and their activities were supervised by the Supreme Judicial Council. Procedures for the application of disciplinary sanctions were different for each of the three branches of the judiciary; sanctions for judges, prosecutors and magistrates were imposed by the Supreme Court of Cassation, the Prosecutor-General and the head of the investigating authorities, respectively. The representative explained that the Supreme Administrative Court had not yet been established, pending the enactment of the Judicial Powers Act, currently being examined on second reading by the National Assembly.

737. With regard to minors' courts, the representative indicated that they were not provided for in national legislation, but the possibility was under consideration and Bulgaria might well establish such special courts.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion and expression and right to participate in the conduct of public affairs

738. With regard to those issues the Committee requested detailed information on the grounds on which the issuance of a passport could be refused and clarifications on how the concept of the "security of the Republic of Bulgaria" was interpreted in that regard, as well as details on the restrictions which could be placed on the freedom of movement of foreign nationals within Bulgarian territory. It requested further information on the law and practice relating to permissible interference with the right to privacy; on registration or other procedures relating to the recognition of religious denominations by the authorities; on whether any legislation was being considered to regulate the activities of the press and other media; on which authority was competent to ban an organization or a political party; on the law and practice relating to the

employment of minors; and on whether any categories of persons in Bulgaria were barred from public service.

739. Members of the Committee also asked for additional information on grounds for the expulsion of foreigners; the existence of exit fees and their amount; and whether the denial of a passport could be appealed. In that context, they pointed out that holding State secrets could not be invoked to restrict freedom of movement and that it would be desirable for such a ground to be eliminated. With regard to freedom of religion, they recalled that the protection of the security of the State was not one of the criteria listed in article 18 of the Covenant, but that was not the case of Bulgarian legislation. Members wished to know whether individuals had access to television so as to be able to address their fellow citizens and what arrangements existed for that purpose; what the exact functions and powers of the Executive Board of the Municipal Council were in the context of article 21 of the Covenant; and how political parties were financed.

740. Replying to the questions raised, the representative of the State party indicated that the grounds on which a passport could be denied or withdrawn were listed exhaustively in article 7 of the Passport Act, which he read out. The concept of "national security" was taken directly from article 12, paragraph 3, of the Covenant. Moreover, that criterion was not often applied in Bulgaria and it mainly concerned persons holding State secrets and members of the military. He said that he had looked for an interpretation of the term "national security" in the Committee's general comments, but had not found one. A passport now cost US$ 20; there was no tax for leaving the country. If the issuance of a passport was refused, the person concerned could appeal the decision to the judicial authorities. Holding a State secret had no longer been a ground for refusing a passport for some time now. As to freedom of movement, foreign nationals were subject to the same regime as Bulgarian citizens, except that embassy officials who wanted to enter border areas had to notify the Ministry of Foreign Affairs.

741. The question of interference with the right to privacy was governed by articles 32 to 34 of the Constitution, as well as by other legislative texts, the basic principle of which was that interference could take place only with the agreement of the person concerned, except in cases expressly provided for by law. He stressed that the constitutional provisions would be elaborated on in the draft Code of Penal Procedure and the draft Post and Telecommunications Act with a view to compliance with the new requirements for the protection of privacy.

742. Under the law as it now stood, the registration of religious denominations was done by the Office of Religious Affairs, which had registered about 30 to date. As practice, especially the recent decisions of the Constitutional Council, had shown, however, there were problems in that area that would have to be solved by the new Religious Denominations Act.

743. The draft legislation on the press and other media had given rise to a lively debate and the differences of opinion had been so great that it had been decided to consult experts from the Council of Europe, who were expected to come to Bulgaria in September 1993. The television was still State owned. However, during elections, political parties were given time on the air, which was shared by all parties presenting candidates, and that system had worked adequately so far. With regard to article 21 of the Covenant, he said that meetings held indoors did not require the authorization of the Executive Board of the Municipal Council, contrary to meetings held outdoors. Decisions by the Executive Board denying permission for gatherings could not be appealed before the courts. He informed the Committee of the requirements for the establishment of political parties and the grounds for the prohibition of their activities,

explaining that such matters were governed by article 11, paragraph 4, of the Constitution and, in greater detail, by articles 22 to 24 of the 1990 Political Parties Act. Only the Supreme Court could ban a political party and only on the proposal of the Chief Prosecutor. At present, over 100 political parties were registered in Bulgaria. Access to certain occupations was subject to conditions laid down by law: in order to be a judge or a prosecutor, for example, a person had to be a Bulgarian citizen and have the necessary legal training and professional level. Like other countries which had broken off with the former communist system, Bulgaria was experiencing what might be called a problem of "decommunization" and a number of laws had already been adopted excluding the former leaders of the totalitarian regime from certain high-level posts. In the case of the Banking and Credit Act, the Constitutional Court had declared the provisions relating to the restrictions on former communist leaders unconstitutional.

Concluding observations by individual members

744. Members of the Committee welcomed the fact that the quality of the dialogue with the Bulgarian delegation had enabled them to note with satisfaction that great progress had been made in Bulgaria in guaranteeing respect for human rights; that the new Constitution was broadly based on the provisions of the Covenant; and that Bulgaria had ratified the first Optional Protocol to the Covenant and undertaken to recognize the competence of the Committee on the Elimination of Racial Discrimination and the Committee against Torture to consider communications submitted by individuals. In addition, new legislative texts had been adopted in order to provide compensation, if possible, for loss or injury suffered by citizens under the former totalitarian regime. He noted that the Constitutional Court had already played a very useful role in strengthening the legal protection of human rights.

745. Members also pointed out that the report related only to the period following the major changes that had taken place in 1989 and did not deal at all with the period following the submission of the initial report of Bulgaria in 1978. In those circumstances, the Committee had not been able to fulfil its responsibilities as it should.

746. Members indicated that the provisions of article 9 of the Covenant relating, *inter alia*, to grounds for and the length of detention had to be fully respected, as did the provision of article 18. In the latter case, the Bulgarian authorities might draw inspiration from the Committee's general comment on freedom of religion and take the appropriate measures in that regard. They also noted that more energetic measures had to be taken to eliminate discrimination against ethnic and religious minorities and to encourage tolerance. To that end, a full human rights teaching programme should be set up and effective penalties should be provided for against persons who abused their authority, particularly law enforcement officials. They stressed that, under article 27 of the Covenant, minorities should not only have the same economic and political status as other Bulgarian citizens, but should also benefit from special measures of protection.

Comments of the Committee

747. At its 1259th meeting (forty-eighth session), held on 28 July 1993, the Committee adopted the following comments.

Introduction

748. The Committee expresses its appreciation to the State party for its report, which has been prepared in accordance with the Committee's guidelines, and for

engaging through a highly qualified delegation in a fruitful dialogue with the Committee. It notes with satisfaction that the information provided by the representative of the State party in his introductory statement, as well as in his replies to the Committee's list of issues and oral questions raised by individual members, complemented the written report in a very constructive way and provided the Committee with a comprehensive view of Bulgaria's actual compliance with the obligations undertaken under the International Covenant on Civil and Political Rights. The Committee, however, draws the attention of the State party to the considerable delay in the submission of its second periodic report, which was due in 1984 and to the lack of information in the report on the period 1978-1990, when several regrettable measures are generally known to have been taken by the former regime violating provisions of the Covenant.

Positive aspects

749. The Committee notes with satisfaction the considerable progress made by the Government of Bulgaria since November 1989 in bringing gradually its national legislation, particularly its Constitution, into conformity with the provisions of the Covenant and other international human rights treaties to which Bulgaria is a party. The recognition by Bulgaria of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol is of particular importance for the effective implementation of the Covenant by the State party.

750. The Committee also notes with satisfaction that the 1991 Constitution of Bulgaria, in its second chapter entitled "Fundamental rights and obligations of citizens", follows the substance and framework of the Covenant. The Committee considers an independent judiciary essential for the proper protection of civil and political rights and welcomes the recent rulings of the Constitutional Court on human rights issues as proof of an increased level of judicial protection of human rights in Bulgaria. Obviously the existence of an effective Constitutional Court promotes and expedites the eradication of anomalies from the former totalitarian period. The Committee welcomes in this context particularly the references the Court has made in several cases to provisions in the Covenant when examining the constitutionality of legal provisions.

751. The Committee considers that the laws enacted since November 1989, in particular, the Act on Political and Civil Rehabilitation of Persons Repressed During the Totalitarian Regime Because of their Origin, Political and Religious Persuasion, the Liability of State for Harm to Citizens Act, the Amnesty and Restoration of Confiscated Property Act, the Restoration of Property Rights over Nationalized Assets Act, the Act on Restoration of Property Rights over Certain Real Estate Procured by the State under the Territorial and Territorial Development Act and the Law on Restoration of Property Rights over Real Estate of Bulgarian Nationals who Applied for Travel to the Republic of Turkey and Other Countries Between May and September 1989 laid solid grounds for the development of a free and democratic society based on the rule of law. Legislation following thereafter has had further effects in that direction.

Factors and difficulties impeding the implementation of the Covenant

752. The Committee notes that remnants of authoritarian rule cannot be easily overcome in a short period of time and that much remains to be done in consolidating and developing democratic institutions and strengthening the implementation of the Covenant. The Committee also recognizes that prejudices with respect to various sectors of the population, especially with regard to national or ethnic minorities and the inadequacy in the provision of human rights education and information, adversely affects the implementation of the Covenant. The lack of independent national institutions in Bulgaria that

monitor the development and protection of human rights is under such circumstances a handicapping factor.

Principal subjects of concern

753. The Committee notes with concern that the Covenant's position in the legal system is not firmly established, that the Supreme Administrative Court, provided for in article 125 of the Constitution, has not yet been set up and that the powers of the prosecutors are excessively large at the expense of the courts. The fact that judicial review of administrative decisions is available exclusively through appeals to the Supreme Court may not provide the citizens with a remedy in compliance with article 2 of the Covenant. Similarly the Committee notes with concern that not all cases of torture that took place under the former regime have had redress and that the harassment of Bulgarian citizens of Turkish ethnic origin that took place under the former regime had lingering negative effects for citizens belonging to that group.

754. The Committee also expresses concern about the reported cases of excessive use of force by police officers, the prolonged periods of detention and wide range of grounds therefor. With respect to the latter, the Committee finds that current legislation does not fully conform with the provisions of article 9 of the Covenant. The Committee further expresses concern about the continuing exodus of Bulgarian citizens of Turkish ethnic origin as well as about the many disadvantages experienced by the Roma (gypsy) minority. Restrictions on the formation of political parties appear to be excessive. Very little information was provided about the status of women and their participation in public life.

Suggestions and recommendations

755. The Committee recommends that remaining restrictions in national laws on human rights should be reviewed and brought into full conformity with the provisions of the Covenant as set forth in articles 18, 19 and 21. The national legislation on detention should be made to conform with article 9 of the Covenant. In this connection, the excessive powers of the prosecutors should be reconsidered. Particular attention should be paid to the protection of the rights of persons belonging to national minorities in compliance with article 27 of the Covenant. In the latter regard, positive action should be taken by the Government. The Committee further suggests the establishment of an institution in order to monitor and strengthen the protection of human rights.

IV. GENERAL COMMENTS OF THE COMMITTEE

Work on general comments

756. At its forty-fifth session, the Committee began discussion of a draft general comment on article 18 of the Covenant on the basis of an initial draft prepared by its working group. It considered that general comment at its 1162nd, 1166th, 1207th, 1209th, 1224th, 1225th, 1226th, 1236th and 1247th meetings during its forty-fifth, forty-seventh and forty-eighth sessions, on the basis of successive drafts revised by its working groups in the light of the comments and proposals advanced by members. The Committee adopted its general comment on article 18 of the Covenant at its 1247th meeting, held on 20 July 1993 (see annex VI). Pursuant to the request of the Economic and Social Council, the Committee decided to transmit the general comment on article 18 to the Council at its next session in 1994.

757. The Committee noted that the working group which met before the forty-sixth session had made substantial progress in its consideration of a draft general comment on article 25 of the Covenant and that a revised draft would be considered by the working group that is to meet before the Committee's forty-ninth session for transmission to the Committee.

758. At its 1229th meeting, held on 6 April 1993, the Committee reaffirmed its earlier decision, adopted at its forty-fifth session, to start preparatory work on a general comment that would address issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocol thereto.

759. At its 1233rd meeting, held on 8 April 1993, the Committee decided to start preparatory work on a general comment on article 27 of the Covenant.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

760. Individuals who claim that any of the rights enumerated in the International Covenant on Civil and Political Rights have been violated, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. Of the 120 States that have ratified or acceded to the Covenant, 73 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. C). Since the Committee's last report to the General Assembly, eight States have ratified or acceded to the Optional Protocol: Armenia, Belarus, Czech Republic, Guinea, Guyana, Romania, Slovakia and Slovenia. No communication can be examined by the Committee if it concerns a State party to the Covenant that is not also a party to the Optional Protocol.

761. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (art. 5(3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submissions from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5(4) of the Optional Protocol, are, however, made public. As regards decisions declaring a communication inadmissible (which are also final), the Committee has decided that it will normally make these decisions public, substituting initials for the names of the alleged victims and the authors.

A. Progress of work

762. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 552 communications concerning 43 States parties have been registered for consideration by the Committee, including 37 placed before it at its forty-sixth to forty-eighth sessions, covered by the present report.

763. The status of the 552 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 161;

(b) Declared inadmissible: 171;

(c) Discontinued or withdrawn: 87;

(d) Declared admissible, but not yet concluded: 39;

(e) Pending at the pre-admissibility stage: 94.

764. In addition, the Secretariat of the Committee has several hundred communications on file, in respect of which the authors have been advised that further information would be needed before their communications could be registered for consideration by the Committee. The authors of some 100 further communications have been informed that the Committee does not intend to consider their cases, as they fall clearly outside the scope of the Covenant or appear to be frivolous.

765. Two volumes containing selected decisions of the Human Rights Committee under the Optional Protocol, from the second to the sixteenth sessions and from the seventeenth to the thirty-second sessions, respectively, have been published (CCPR/C/OP/1 and 2).

766. During the forty-sixth to forty-eighth sessions, the Committee concluded consideration of 23 cases by adopting its views thereon. These are cases Nos. 237/1987 (Denroy Gordon v. Jamaica), 255/1987 (Carlton Linton v. Jamaica), 263/1987 (Miguel González del Río v. Peru), 274/1988 (Loxley Griffiths v. Jamaica), 282/1988 (Leaford Smith v. Jamaica), 292/1988 (Delroy Quelch v. Jamaica), 307/1988 (John Campbell v. Jamaica), 309/1988 (Carlos Orihuela Valenzuela v. Peru), 314/1988 (Peter Chiiko Bwalya v. Zambia), 317/1988 (Howard Martin v. Jamaica), 320/1988 (Victor Francis v. Jamaica), 326/1988 (Henry Kalenga v. Zambia), 334/1988 (Michael Bailey v. Jamaica), 338/1988 (Leroy Simmonds v. Jamaica), 356/1989 (Trevor Collins v. Jamaica), 359/1989 and 385/1989 (John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada), 362/1989 (Balkissoon Soogrim v. Trinidad and Tobago), 387/1989 (Arvo O. Karttunen v. Finland), 402/1990 (Henricus A. G. M. Brinkhof v. the Netherlands), 406/1990 and 426/1990 (Lahcen B. M. Oulajin and Mohamed Kaiss v. the Netherlands) and 470/1991 (Joseph Kindler v. Canada). The texts of the views in these 23 cases are reproduced in annex XII.

767. The Committee also concluded consideration of 16 cases by declaring them inadmissible. These are cases Nos. 337/1988 (E. E. v. Jamaica), 370/1989 (G. H. v. Jamaica), 380/1989 (R. L. M. v. Trinidad and Tobago), 404/1990 (N. P. v. Jamaica), 420/1990 (G. T. v. Canada), 427/1990 (H. H. v. Austria), 429/1990 (E. W. et al. v. the Netherlands), 432/1990 (W. B. E. v. the Netherlands), 450/1991 (I. P. v. Finland), 467/1991 (V. E. M. v. Spain), 478/1991 (A. P. L.-v. d. M. v. the Netherlands), 485/1991 (V. B. v. Trinidad and Tobago), 490/1992 (A. S. and L. S. v. Australia), 496/1992 (T. P. v. Hungary), 499/1992 (K. B.-W. v. Australia), 501/1992 (J. H. W. v. the Netherlands). The texts of the decisions in these 16 cases are reproduced in annex XIII.

768. During the period under review, 18 communications were declared admissible for examination on the merits; decisions declaring communications admissible are not made public. Consideration of seven cases was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's rules of procedure or under art. 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Growth of the Committee's case-load under the Optional Protocol

769. As the Committee has already stated in previous annual reports, the increased number of States parties to the Optional Protocol and increased public awareness of the Committee's work under the Optional Protocol have led to a growth in the number of communications submitted to it. At the opening of the Committee's forty-eighth session, there were 141 cases pending. In addition, the secretariat took action on several hundred cases which, for one reason or another, were not registered under the Optional Protocol and placed before the Committee; in this context, it should be noted that the increase in ratification of the Optional Protocol is partly responsible for the growth in the total number of communications received. Furthermore, follow-up activities are required in the majority of the 121 cases in which the Committee found a violation of the Covenant. This workload means that the Committee can no longer examine communications expeditiously and highlights the urgent need to reinforce the secretariat staff. The Human Rights Committee reiterates its request to the

Secretary-General to take the necessary steps to ensure a substantial increase in the number of staff, specialized in the various legal systems, assigned to service the Committee, and wishes to record that the work under the Optional Protocol continues to suffer as a result of insufficient secretariat resources.

770. In order to reduce the backlog of pending communications, the Committee decided to request an extended session in order to examine communications during the fifty-first session of 1994.

C. New approaches to examining communications under the Optional Protocol

771. In view of the growing case-load, the Committee has been applying new working methods to enable it to deal more expeditiously with communications under the Optional Protocol.

1. Special Rapporteur on new communications

772. At its thirty-fifth session, the Committee decided to designate a Special Rapporteur to process new communications as they were received, i.e. between sessions of the Committee. Mrs. Rosalyn Higgins served as Special Rapporteur for a period of two years. At its forty-first session, the Committee designated Mr. Rajsoomer Lallah to succeed Mrs. Higgins for a period of one year; at the forty-fourth session, his mandate was renewed by the Committee for an additional year. At its forty-seventh session, the Committee appointed Ms. Christine Chanet to succeed Mr. Lallah. Since the end of the forty-fifth session, the Special Rapporteurs have transmitted 35 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the question of admissibility. In some cases, the Special Rapporteurs recommended to the Committee that the communications be declared inadmissible without forwarding them to the State party. The Special Rapporteurs also issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure.

2. Competence of the Working Group on Communications

773. At its thirty-sixth session, the Committee decided to authorize the Working Group on Communications, consisting of five members, to adopt decisions to declare communications admissible when all the members so agreed. Failing such agreement, the Working Group would refer the matter to the Committee. It could also do so whenever it believed that the Committee itself should decide the question of admissibility. While the Working Group could not adopt decisions declaring communications inadmissible, it might make recommendations in that respect to the Committee. Pursuant to those rules, the Working Group on Communications, preceding the forty-sixth, forty-seventh and forty-eighth sessions of the Committee, declared 14 communications admissible.

D. Individual opinions

774. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, members can add their individual concurring or dissenting opinions to the Committee's views.

Pursuant to rule 92, paragraph 3, members can append their individual opinions to the Committee's decisions declaring communications inadmissible.

775. During the sessions covered by the present report, individual opinions were appended to the Committee's views in cases Nos. 307/1988 (John Campbell v. Jamaica), 338/1988 (Leroy Simmonds v. Jamaica), 359/1989 and 385/1989 (John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada), 387/1989 (Arvo O. Karttunen v. Finland), 406/1990 and 426/1990 (Lahcen B. M. Oulajin and Mohamed Kaiss v. the Netherlands) and 470/1991 (Joseph Kindler v. Canada).

E. Issues considered by the Committee

776. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its forty-fifth session in 1992, the reader is referred to the Committee's annual reports for 1984 to 1992 which, *inter alia*, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

777. The following summary reflects further developments of issues considered during the period covered by the present report.

1. Procedural issues

(a) The concept of victim (art. 1 of the Optional Protocol)

778. Under article 1 of the Optional Protocol, individuals who claim to be victims of a violation by a State party of any of the rights set forth in the Covenant may submit a communication to the Committee. In case No. 429/1990 (E. W. *et al*. v. the Netherlands), the authors claimed that the State party's preparations for the deployment of cruise missiles and the presence of other nuclear weapons in the Netherlands violated their rights under article 6 of the Covenant. The Committee noted that the procedure laid down in the Optional Protocol was not designed for conducting public debate over matters of public policy. It considered:

> "For a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision or practice" (annex XIII, sect. G, para. 6.4).

The Committee concluded that the deployment of nuclear weapons in the Netherlands did not, at the relevant period of time, place the authors in a position to claim to be victims whose right to life was then violated or under imminent prospect of violation and declared the communication inadmissible.

779. When a State party has already provided an effective remedy to a person claiming to be a victim of a violation of a right under the Covenant, he or she can no longer put forward a claim under the Optional Protocol. Thus, in case No. 478/1991 (A. P. L.-v. d. M. v. the Netherlands), the Committee found that the State party had remedied the violation complained of by retroactively amending a law which denied unemployment benefits to married women who did not

qualify as breadwinners. This part of the communication was therefore declared inadmissible under article 1 of the Optional Protocol.

(b) No claim under article 2 of the Optional Protocol

780. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

781. Although at the admissibility stage an author does not need to prove the alleged violation, he must submit sufficient evidence in substantiation of his allegation to constitute a *prima facie* case. A "claim" is, therefore, not just an allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to substantiate his claim for purposes of admissibility, the Committee has held the communication inadmissible, according to rule 90(b) of its rules of procedure, declaring that the author "has no claim under article 2 of the Optional Protocol".

782. In case No. 380/1989 (R. L. M. v. Trinidad and Tobago), an attorney complained that a certain judge at the Port-of-Spain Assizes Court had made unjustified remarks which called into question the author's professional ethics. He claimed that these remarks made him a victim of a violation of article 17 of the Covenant. The Committee, after having examined the information before it, observed that the author had not shown that the remarks attributed to the judge constituted an unlawful attack on his honour and reputation, and concluded that the author had no claim under article 2 of the Optional Protocol.

783. Other cases declared inadmissible, *inter alia*, for lack of substantiation of the claim, are communications Nos. 337/1988 (E. E. v. Jamaica), 370/1989 (G. H. v. Jamaica), 404/1990 (N. P. v. Jamaica), 427/1990 (H. H. v. Austria) and 432/1990 (W. B. E. v. the Netherlands).

(c) Competence of the Committee and incompatibility with the provisions of the Covenant (Optional Protocol, art. 3)

784. In its work under the Optional Protocol the Committee has had several occasions to point out that it is not a further court of appeal on the domestic law of States parties against whom communications are brought.

785. In case No. 370/1989 (G. H. v. Jamaica), the author, who had been sentenced to death, had complained that his trial was unfair and that the judge had misdirected the jury on several issues. The Committee decided that the communication was inadmissible under article 3 of the Optional Protocol. It found that the author's claims did not come within the competence of the Committee, as they related primarily to the judge's instructions to the jury and the evaluation of evidence by the court. The Committee recalled that it was generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence and to review specific instructions to the jury by the judge, unless it is clear that the instructions were arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality.

786. The Committee reached a similar decision with regard to case No. 404/1990 (N. P. v. Jamaica) (annex XIII, sect. D).

(d) No simultaneous examinations of the same matter (Optional Protocol, art. 5, para. 2 (a))

787. Article 5, paragraph 2(a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. Only the simultaneous examination of a case is precluded, however, and the Committee is, in principle, competent to consider cases that have been examined elsewhere, unless the State party has made a reservation upon ratification of or accession to the Optional Protocol precluding consideration of the same matter. For instance, most European States parties to the Optional Protocol that are also members of the Council of Europe and parties to the European Convention on Human Rights have made such reservations (the Netherlands and Portugal have not). Thus, while the Committee has declared inadmissible, on the basis of pertinent reservations, cases examined by the European Commission of Human Rights (e.g. case No. 121/1982 (A. M. v. Denmark)), it has considered a number of cases submitted against the Netherlands and previously examined by the European Commission (e.g. No. 201/1985 (Hendriks v. the Netherlands)). During its forty-eighth session, the Committee considered the admissibility of communication No. 467/1991 (V. E. M. v. Spain). The complainant, who alleged several violations under the Covenant, had earlier filed a complaint with the European Commission of Human Rights, which was declared inadmissible *ratione materiae*. The Committee noted that:

> "The Spanish reservation on article 5, paragraph 2(a), precludes the examination of the same matter if it had been *submitted* to the European Commission. Notwithstanding that the author's case before the European Commission was summarily dismissed as inadmissible under the Convention, it had none the less been 'submitted' thereto. Accordingly, in the light of the Spanish reservation to article 5, paragraph 2(a), of the Optional Protocol, the Committee is precluded from considering the communication" (annex XIII, sect. J, para. 5.2).

(e) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2(b))

788. Pursuant to article 5, paragraph 2(b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that these remedies are effective and available. The State party is required to give "details of the remedies which it submitted that had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977 (Torres Ramírez v. Uruguay)). The rule also provides that the Committee is not precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

789. In communication No. 420/1990, G. T., a Canadian citizen, claimed that he had conscientious objections to teaching in the Roman Catholic school system, and that he had been discriminated against by the Board of Education for the City of North York, which did not permit him to return to the public school system. The author had applied for review of the Board's decision to the Divisional Court of Ontario, which dismissed his application. He claimed that he could not pursue his appeal for lack of funds. The Committee observed that the author had not sought judicial review of the latter decision by the Court of Appeal, that he appeared to have made no effort to apply for legal aid, and had not availed himself of procedures under the Ontario Human Rights Code. In the

light of the above, he had not exhausted domestic remedies and therefore the communication was inadmissible.

(f) Inadmissibility ratione temporis

790. As at previous sessions, the Committee was faced with communications concerning events that occurred prior to the entry into force of the Optional Protocol for the State concerned. The criterion of admissibility has been whether the events have had continued effects which themselves constitute violations of the Covenant after the entry into force of the Optional Protocol.

791. In case No. 490/1992 (A. S. and L. S. v. Australia), the authors alleged that several violations of their rights had been committed during court proceedings related to disputes between the authors and their business partners. The irregularities complained of occurred between 1985 and 1987, while the Optional Protocol entered into force for Australia on 25 December 1991. The Committee observed that the Optional Protocol cannot be applied retroactively and concluded that it was precluded ratione temporis from examining the communication.

792. In case No. 496/1992 (T. P. v. Hungary), the author alleged, inter alia, that following his return to Hungary from a Soviet labour camp after the Second World War, he was deprived of property and the right to practise his profession, was improperly confined to prisons and mental hospitals and was subjected to inhuman and degrading treatment. Since the events complained of occurred prior to the entry into force of the Optional Protocol for Hungary on 7 December 1988, the Committee concluded that this part of the communication was inadmissible.

793. In case No. 499/1992 (K. L. B.-W. v. Australia), the author claimed that, in 1970, she had been subjected to electroconvulsive therapy and deep sleep therapy while pregnant and that, as a consequence, her son's health was precarious. In declaring the communication inadmissible, the Committee observed that:

> "The Optional Protocol cannot be applied retroactively and that the Committee is therefore precluded ratione temporis from examining events that occurred prior to 25 December 1991, unless they continue after the entry into force of the Optional Protocol or have effects that in themselves constitute a violation of the Covenant. Accordingly, the Committee finds that it is precluded ratione temporis from examining the author's allegations" (annex XIII, sect. O, para. 4.2).

(g) Interim measures under rule 86

794. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. These authors claim to be innocent of the crimes of which they were convicted and further allege that they were denied a fair hearing. In view of the urgency of the communications, the Committee has requested the States parties concerned, under rule 86 of the Committee's rules of procedure, not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. No execution has taken place in these circumstances.

795. In two other cases, one relating to extradition and the other to expulsion, the State party was requested not to extradite or deport the authors until the Committee has had an opportunity to decide on the admissibility of the communications.

796. In communication No. 470/1991 (Joseph Kindler v. Canada), the State party decided not to respect the Committee's request for interim measures of protection and proceeded to extradite the author to the United States. In its Views on the case, adopted on 30 July 1993, the Committee regretted the State party's failure to cooperate with it in this respect.

2. Substantive issues

(a) Right to life (Covenant, art. 6)

797. Although capital punishment is not per se unlawful under the Covenant, article 6, paragraph 2, provides that a "sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant". Thus, a nexus is established between the imposition of a sentence of death and observance by State authorities of guarantees under the Covenant. Accordingly, in cases where the Committee found that the State party had violated article 14 of the Covenant, in that the author had been denied a fair trial and appeal, the Committee held that in the circumstances the imposition of the sentence of death also entailed a violation of article 6. In its views in case No. 320/1988 (Victor Francis v. Jamaica) the Committee observed:

> "The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal'" (annex XII, sect. K, para. 12.3).

798. Having concluded that the final sentence of death had been imposed without the requirements of article 14 having been fully met, the Committee found that the right protected by article 6 had been violated. Similar conclusions were reached in cases Nos. 282/1988 (Leaford Smith v. Jamaica), 307/1988 (John Campbell v. Jamaica) and 356/1989 (Trevor Collins v. Jamaica).

799. In case No. 470/1991 (Joseph Kindler v. Canada), the Committee had to determine whether the requirement under article 6, paragraph 1, to protect the right to life prohibited the State party from extraditing the complainant to the United States, from where he had escaped after having been convicted for murder and where he faced the imposition of the death penalty. The Committee, while recalling the obligation of States parties to limit the use of the death penalty and to strive for its abolition, observed:

> "... article 6, paragraph 1, must be read together with article 6, paragraph 2, which does not prohibit the imposition of the death penalty for the most serious crimes. Canada itself did not impose the death penalty on Mr. Kindler, but extradited him to the United States, where he faced capital punishment. If Mr. Kindler had been exposed, through extradition from Canada, to a real risk of a violation of article 6, paragraph 2, in the United States, that would have entailed a violation by Canada of its obligations under article 6, paragraph 1. Among the requirements of article 6, paragraph 2, is that capital punishment be imposed only for the most serious crimes, in circumstances not contrary to

> the Covenant and other instruments, and that it be carried out pursuant to a final judgement rendered by a competent court. The Committee notes that Mr. Kindler was convicted of premeditated murder, undoubtedly a very serious crime. He was over 18 years of age when the crime was committed. The author has not claimed before the Canadian courts or before the Committee that the conduct of the trial in the Pennsylvania court violated his rights to a fair hearing under article 14 of the Covenant.
>
> "Moreover, the Committee observes that Mr. Kindler was extradited to the United States following extensive proceedings in the Canadian courts, which reviewed all the evidence submitted concerning Mr. Kindler's trial and conviction. In the circumstances, the Committee finds that the obligations arising under article 6, paragraph 1, did not require Canada to refuse the author's extradition" (annex XII, sect. U, paras. 14.3 and 14.4).

The Committee also had to decide whether the fact that Canada has itself abolished capital punishment, except for certain military offences, required it to refuse the extradition of Mr. Kindler or to request assurances from the United States, as it was entitled to do under the Extradition Treaty, that the death penalty would not be imposed. The Committee considered that:

> "... the abolition of capital punishment does not release Canada of its obligations under extradition treaties. However, it is in principle to be expected that, when exercising a permitted discretion under an extradition treaty (namely, whether or not to seek assurances that capital punishment will not be imposed) a State which has itself abandoned capital punishment would give serious consideration to its own chosen policy in making its decision. The Committee observes, however, that the State party has indicated that the possibility to seek assurances would normally be exercised where exceptional circumstances existed. Careful consideration was given to this possibility.
>
> "While States must be mindful of the possibilities for the protection of life when exercising their discretion in the application of extradition treaties, the Committee does not find that the terms of article 6 of the Covenant necessarily require Canada to refuse to extradite or to seek assurances. The Committee notes that the extradition of Mr. Kindler would have violated Canada's obligations under article 6 of the Covenant, if the decision to extradite without assurances would have been taken arbitrarily or summarily. The evidence before the Committee reveals, however, that the Minister of Justice reached a decision after hearing argument in favour of seeking assurances. The Committee further takes note of the reasons given by Canada not to seek assurances in Mr. Kindler's case, in particular, the absence of exceptional circumstances, the availability of due process and the importance of not providing a safe haven for those accused of or found guilty of murder" (annex XII, sect. U, paras. 14.5 and 14.6).

Five members of the Committee appended separate individual opinions with respect to the Committee's conclusion that the facts before it did not reveal a violation of article 6 of the Covenant.

(b) The right not to be subjected to torture (Covenant, art. 7)

800. Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In case No. 255/1987 (Carlton Linton v. Jamaica), the complainant claimed that he had been subjected to torture and ill-treatment while being detained on death row and that he had received inadequate medical treatment after having been shot in

the hip during an escape attempt. The Committee concluded, in absence of detailed refutation by the State party, that the author's treatment had been cruel and inhuman within the meaning of article 7 of the Covenant.

801. In case No. 320/1988 (Victor Francis v. Jamaica), the complainant had made specific allegations, which had not been contested by the State party, that, on 9 July 1988, he was assaulted by soldiers and warders, who beat him, pushed him with a bayonet, emptied a urine bucket over his head, threw his food and water on the floor and his mattress out of the cell. In the Committee's view, this amounted to degrading treatment within the meaning of article 7.

802. A violation of article 7 was also found in case No. 362/1989 (Balkissoon Soogrim v. Trinidad and Tobago).

803. In case No. 317/1988 (Howard Martin v. Jamaica), the complainant claimed that his prolonged stay on death row constituted cruel, inhuman and degrading treatment. The Committee considered that prolonged judicial proceedings did not per se constitute that kind of treatment, even if they might be a source of mental strain and tension for detained persons. The Committee observed:

> "In the instant case, the delay between the judgement of the Court of Appeal and the dismissal of the author's petition to the Judicial Committee of the Privy Council has been disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal promptly produced its written judgement and that the ensuing delay in petitioning the Judicial Committee was largely attributable to the author. In the circumstances of the present case, the Committee affirms its jurisprudence that even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies" (annex XII, sect. J, para. 12.2).

804. The facts and circumstances of each case must be examined to see whether an issue under article 7 arises. In this connection, the Committee considered in case No. 470/1991 (Joseph Kindler v. Canada) that:

> "[in] determining whether, in a particular case, the imposition of capital punishment could constitute a violation of article 7, the Committee will have regard to the relevant personal factors regarding the author, the specific conditions of detention on death row, and whether the proposed method of execution is particularly abhorrent" (annex XII, sect. U, para. 15.3).

(c) Liberty and security of person (Covenant, art. 9)

805. Article 9 of the Covenant guarantees to everyone the right to liberty and security of person. Under paragraph 1, no one shall be subjected to arbitrary arrest or detention. Paragraph 2 prescribes that anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Paragraph 3 gives anyone arrested or detained on a criminal charge the right to be brought promptly before a judge.

806. In case No. 314/1988 (Peter Chiiko Bwalya v. Zambia), the complainant had been held in prolonged custody on charges of belonging to an illegal political party. Since he was not brought promptly before a judge, the Committee found that his right under article 9, paragraph 3, had been violated.

(d) Treatment during imprisonment (Covenant, art. 10)

807. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In cases Nos. 255/1987 (Carlton Linton v. Jamaica), 320/1988 (Victor Francis v. Jamaica) and 362/1989 (Balkissoon Soogrim v. Trinidad and Tobago), the Committee found that a violation of article 7 (see sect. (b) above) also entailed a violation of article 10, paragraph 1.

(e) Liberty of movement (Covenant, art. 12)

808. Article 12, paragraph 1, of the Covenant gives everyone lawfully within the territory of a State the right to liberty of movement and freedom to choose his residence. In case No. 314/1988 (Peter Chiiko Bwalya v. Zambia), the complainant, a political opponent of the Government, had claimed that he was placed under restrictions on his freedom of movement and that he was denied a passport. In the absence of a denial of the allegations by the State party, the Committee found that this amounted to a violation of article 12, paragraph 1, of the Covenant.

809. Paragraph 2 of article 12 protects an individual's right to leave any country, including his own. Pursuant to paragraph 3, this right may be restricted, primarily, on grounds of national security and public order (*ordre public*). In case No. 263/1987 (Miguel González del Río v. Peru), judicial proceedings against the complainant had been pending since 1985 and had not resulted in any formal indictment. However, an order for the author's arrest remained pending, as a result of which the complainant could not leave Peruvian territory. The Committee considered:

> "that pending judicial proceedings may justify restrictions on an individual's right to leave his country. But where the judicial proceedings are unduly delayed, a constraint upon the right to leave the country is thus not justified. In this case, the restriction on Mr. González' freedom to leave Peru has been in force for seven years, and the date of its termination remains uncertain. The Committee considers that this situation violates the author's rights under article 12, paragraph 2; in this context, it observes that the violation of the author's rights under article 12 may be linked to the violation of his right, under article 14, to a fair trial" (annex XII, sect. C, para. 5.3).

(f) Guarantees of a fair trial (Covenant, art. 14)

810. Article 14, paragraph 1, provides that all persons shall be equal before the courts and gives everyone the right to a fair and public hearing in the determination of criminal charges against him. In case No. 263/1987 (Miguel González del Río v. Peru), the Committee stated:

> "The Committee has noted the author's claim that he was not treated equally before the Peruvian courts, and that the State party has not refuted his specific allegation that some of the judges involved in the case had referred to its political implications and justified the courts' inaction or the delays in the judicial proceedings on this ground. The Committee recalls that the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception. It considers that the Supreme Court's position in the author's case was, and remains, incompatible with this requirement. The Committee is further of the view that the delays in the workings of the judicial system in respect of the author since 1985 violate his right, under article 14, paragraph 1, to a fair trial. In this connection, the Committee observes that no

decision at first instance in this case had been reached by the autumn of 1992" (annex XII, sect. C, para. 5.2).

811. In case No. 307/1988 (John Campbell v. Jamaica), the author claimed that, during his trial on a murder charge, his son was detained in order to force him to testify against his father. The Committee observed:

> "Article 14 of the Covenant gives everyone the right to a fair and public hearing in the determination of a criminal charge against him; an indispensable aspect of the fair trial principle is the equality of arms between the prosecution and the defence. The Committee observes that the detention of witnesses in view of obtaining their testimony is an exceptional measure, which must be regulated by strict criteria in law and in practice. It is not apparent from the information before the Committee that special circumstances existed to justify the detention of the author's minor child. Moreover, in the light of his retraction, serious questions arise about possible intimidation and about the reliability of the testimony obtained under these circumstances. The Committee therefore concludes that the author's right to a fair trial was violated" (annex XII, sect. G, para. 6.4).

812. In case No. 387/1989 (Arvo Karttunen v. Finland), the Committee observed:

> "The impartiality of the court and the publicity of proceedings are important aspects of the right to a fair trial within the meaning of article 14, paragraph 1. 'Impartiality' of the court implies that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties. Where the grounds for disqualification of a judge are laid down by law, it is incumbent upon the court to consider *ex officio* these grounds and to replace members of the court falling under the disqualification criteria. A trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be fair or impartial within the meaning of article 14" (annex XII, sect. R, para. 7.2).

813. Pursuant to article 14, paragraph 3(b), accused persons must have adequate time and facilities to prepare their defence. In finding a violation of this provision, the Committee held in case No. 282/1988 (Leaford Smith v. Jamaica):

> "As to the author's claims that he was not allowed adequate time to prepare his defence and that, as a result, a number of key witnesses for the defence were not traced or called to give evidence, the Committee recalls its previous jurisprudence that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an emanation of the principle of equality of arms. The determination of what constitutes 'adequate time' requires an assessment of the circumstances of each case. In the instant case, it is uncontested that the trial defence was prepared on the first day of the trial. The material before the Committee reveals that one of the court-appointed lawyers requested another lawyer to replace him. Furthermore, another attorney assigned to represent the author withdrew the day prior to the trial; when the trial was about to begin at 10 a.m., the author's counsel asked for a postponement until 2 p.m., so as to enable him to secure professional assistance and to meet with his client, as he had not been allowed by the prison authorities to visit him late at night the day before. The Committee notes that the request was granted by the judge, who was intent on absorbing the backlog on the court's agenda. Thus, after the jury was empanelled, counsel had only four

> hours to seek an assistant and to communicate with the author, which he could only do in a perfunctory manner. This, in the Committee's opinion, is insufficient to prepare adequately the defence in a capital case. There is also, on the basis of the information available, the indication that this affected counsel's possibility of determining which witnesses to call. In the Committee's opinion, this constitutes a violation of article 14, paragraph 3(b), of the Covenant" (annex XII, sect. E, para. 10.4).

814. Article 14, paragraph 3(d), gives every accused person the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; the provision also provides the right to have legal assistance assigned to the accused, in any case where the interests of justice so require, and without payment by the accused in any such case if he does not have sufficient means to pay for it. In case No. 307/1988 (John Campbell v. Jamaica), the complainant, who had appealed against the judgement of the court of first instance, which had sentenced him to death, was not notified of the name of his court-appointed lawyer until after the appeal was dismissed. This effectively prevented him from consulting with his lawyer and from giving him instructions in preparation of the appeal. The Committee concluded that this constituted a violation of article 14, paragraph 3(d).

815. In case No. 356/1989 (Trevor Collins v. Jamaica), legal assistance was assigned to the complainant for his appeal against the death sentence, but counsel saw no merit in the appeal and effectively left the complainant without legal representation. The Committee considered that counsel was entitled to recommend that an appeal should not proceed; however, if the complainant insisted upon the appeal, he should have continued to represent him, or the complainant should have had the opportunity to retain counsel at his own expense. In finding a violation of article 14, paragraph 3(d), the Committee considered that, while the article does not entitle the accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice.

816. Pursuant to article 14, paragraph 3(e), an accused person shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. In case No. 237/1987 (Denroy Gordon v. Jamaica), the author claimed that the trial judge had refused to have a specific witness testify in his defence. The Committee found no violation of the provision. It noted that the Court had excluded the evidence, since it was not part of the *res gestae*, and observed:

> "article 14, paragraph 3(e), does not provide an unlimited right to obtain the attendance of any witness requested by the accused or his counsel. It is not apparent from the information before the Committee that the court's refusal to hear Corporal Afflick was such as to infringe the equality of arms between the prosecution and the defence. In the circumstances, the Committee is unable to conclude that article 14, paragraph 3(e), has been violated" (annex XII, sect. A, para. 6.3).

817. Article 14, paragraph 5, gives everyone convicted of a crime the right to have his conviction and sentence reviewed by a higher tribunal according to law. The right of appeal can be effectively exercised only if there is a written judgement of a lower tribunal. In its Views on communication No. 282/1988 (Leaford Smith v. Jamaica), the Committee found a violation of article 14, paragrapn 5, read together with paragraph 3(c), and observed:

> "For the effective exercise of this right, a convicted person must have the opportunity to obtain, within a reasonable time, access to duly reasoned judgements, for every available instance of appeal. The Committee observes that the Judicial Committee of the Privy Council dismissed the author's first petition for special leave to appeal because of the absence of a written judgement of the Jamaican Court of Appeal. It further observes that over four years after the dismissal of the author's appeal in September 1984 and his petitions for leave to appeal by the Judicial Committee in February and December 1987, no reasoned judgement had been issued, which once more deprived the author of the possibility to effectively petition the Judicial Committee. The Committee therefore finds that Mr. Smith's rights under article 14, paragraph 3(c), and article 14, paragraph 5, of the Covenant, have been violated" (annex XII, sect. E, para. 10.5).

818. A similar violation was found in cases Nos. 320/1988 (Victor Francis v. Jamaica) and 356/1989 (Trevor Collins v. Jamaica).

(g) Freedom of expression (Covenant, art. 19)

819. Under article 19, paragraph 1, everyone has the right to hold opinions without interference; paragraph 2 gives everyone the freedom of expression. In case No. 314/1988 (Peter Chiiko Bwalya v. Zambia), the complainant, a political opponent of the Government in power, had been detained and harassed by the authorities in order to prevent him from engaging in political activities. The Committee considered that this constituted a violation of the complainant's rights under article 19.

820. In cases Nos. 359/1989 and 385/1989 (John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada), the authors claimed that Bill 178 enacted by the Province of Quebec, which prohibited them from advertising their businesses on external signs in any language other than French, violated their freedom of expression. The Government of Quebec had argued that commercial activity did not fall within the ambit of article 19. The Committee did not share this opinion and observed:

> "Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression. In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others" (annex XII, sect. P, para. 11.3).

821. The rights provided for in article 19, paragraph 2, may be subject to certain restrictions, but only as are provided by law and are necessary for the protection of the rights or reputations of others or for the protection of national security, public order (ordre public), or public health or morals. In this context, the Committee observed in the language law cases:

> "While the restrictions on outdoor advertising are indeed provided for by law, the issue to be addressed is whether they are necessary for the respect of the rights of others. The rights of others could only be the rights of the francophone minority within Canada under article 27. This is

> the right to use their own language, which is not jeopardized by the freedom of others to advertise in other than the French language. Nor does the Committee have reason to believe that public order would be jeopardized by commercial advertising outdoors in a language other than French. The Committee notes that the State party does not seek to defend Bill 178 on these grounds. Any constraints under article 19, paragraphs 3(a) and 3(b), would in any event have to be shown to be necessary. The Committee believes that it is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those engaged in such fields as trade. For example, the law could have required that advertising be in both French and English. A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice. The Committee accordingly concludes that there has been a violation of article 19, paragraph 2" (annex XII, sect. P, para. 11.4).

One member of the Committee appended an individual opinion with respect to this issue.

(h) The right to take part in the conduct of public affairs (Covenant, art. 25(a))

822. Article 25(a) of the Covenant gives every citizen the right to take part in the conduct of public affairs. In case No. 314/1988 (Peter Chiiko Bwalya v. Zambia), the complainant, a leading figure of a political party in opposition to the former President, had been prevented from participating in a general election campaign as well as from preparing his candidacy for this party. The Committee observed that:

> "This amounts to an unreasonable restriction on the author's right to 'take part in the conduct of public affairs' which the State party has failed to explain or justify. In particular, it has failed to explain the requisite conditions for participation in the elections. Accordingly, it must be assumed that Mr. Bwalya was detained and denied the right to run for a parliamentary seat in the Constituency of Chifubu merely on account of his membership in a political party other than that officially recognized; in this context, the Committee observes that restrictions on political activity outside the only recognized political party amount to an unreasonable restriction of the right to participate in the conduct of public affairs" (annex XII, sect. I, para. 6.6).

(i) Non-discrimination (Covenant, art. 26)

823. Article 26 of the Covenant guarantees equality before the law and equal protection of the law without any discrimination. In its jurisprudence, the Committee has consistently expressed the view that this article does not make all differences in treatment discriminatory; a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of that article.

824. In cases Nos. 406/1990 and 426/1990 (Lahcen B. M. Oulajin and Mohamed Kaiss v. the Netherlands), the authors claimed that the authorities had made an unreasonable distinction between their own children and their foster children, all of whom were living in Morocco, in denying them benefits under the Child Benefit Act for their foster children. The Committee found that the distinction made under the Act, in particular the requirement that a foster parent be

involved in the upbringing of the foster children, as a precondition to the granting of benefits, was not incompatible with article 26 of the Covenant.

825. In case No. 402/1990 (Henricus A. G. M. Brinkhof v. the Netherlands), the issue was the differentiation in treatment between Jehovah's Witnesses and other conscientious objectors in the Netherlands. Jehovah's Witnesses are exempt from performing military and substitute service, while no legal possibility exists for other conscientious objectors to be exempt from the service altogether; they are required to do substitute service, and if they refuse to do this for reasons of conscience, they are prosecuted and liable to imprisonment. The Committee considered:

> "that the exemption of only one group of conscientious objectors and the inapplicability of exemption for all others cannot be considered reasonable. In this context, the Committee refers to its general comment on article 18 and emphasizes that, when a right of conscientious objection to military service is recognized by a State party, no differentiation shall be made among conscientious objectors on the basis of the nature of their particular beliefs. However, in the instant case, the Committee considers that the author has not shown that his convictions as a pacifist are incompatible with the system of substitute service in the Netherlands or that the privileged treatment accorded to Jehovah's Witnesses adversely affected his rights as a conscientious objector against military service" (annex XII, sect. S, para. 9.3).

Although the Committee found that the complainant was not a victim of a violation of article 26 of the Covenant, it recommended that the State party review its relevant regulations and practice, with a view to removing any discrimination between persons holding equally strong objections to military and substitute service.

F. Remedies called for under the Committee's views

826. The Committee's decisions on the merits are referred to as "views" in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee, in a case concerning the death penalty, found:

> "In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Leaford Smith, a victim of violations of article 14 and consequently of article 6, is entitled, according to article 2, paragraph 3(a), of the Covenant, to an effective remedy, in this case entailing his release."

The Committee further stated that it wished to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's Views (case No. 282/1988 (Leaford Smith v. Jamaica), annex XII, sect. E, paras. 12 and 13).

G. Monitoring compliance with the Committee's Views under the Optional Protocol

827. From its seventh session in 1979 to its forty-eighth session in 1993, the Human Rights Committee has adopted Views with respect to 161 communications received under the Optional Protocol and found violations in 121 of them. During the years, however, the Committee has been informed by States parties in only relatively few cases of any measures taken by them in pursuance of the Views adopted.

828. Because of the general lack of knowledge about State compliance with its Views, the Committee decided at its thirty-ninth session to establish a mechanism which would permit it to seek and to evaluate information concerning State compliance and designated Mr. János Fodor as Special Rapporteur for the follow-up of Views. The measures adopted by the Committee in this respect are reproduced in annex XI to its annual report for 1990. 8/

829. In carrying out his mandate, the Special Rapporteur for the follow-up of Views has requested written information from the States parties on any measures taken in pursuance of the Committee's Views. The Special Rapporteur analysed the replies received and reported to the Committee at its forty-seventh session.

830. At its forty-seventh session, the Committee designated Mr. Andreas Mavrommatis to succeed Mr. Fodor as Special Rapporteur. At the forty-eighth session, the Special Rapporteur presented to the Committee a conference room paper on follow-up issues. Due to lack of time, this paper could not be discussed, and the debate on it was deferred to the forty-ninth session.

Notes

1/ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40).

2/ Ibid., *Thirty-second Session, Supplement No. 44* (A/32/44) and corrigendum, annex IV.

3/ Ibid., *Thirty-sixth Session, Supplement No. 40* (A/36/40), annex V.

4/ Ibid., annex VI.

5/ Ibid., *Forty-fifth Session, Supplement No. 40* (A/45/40), vol. I, para. 12.

6/ Ibid., *Forty-sixth Session, Supplement No. 40* (A/46/40), paras. 21 and 32 and annex VII.

7/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as the summary records of the Committee's meetings, are published in the bound volumes that are being issued under the title of *Yearbook of the Human Rights Committee*, beginning with the years 1977 and 1978.

8/ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40).

Annex I

STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 31 JULY 1993*

A. States parties to the International Covenant on Civil and Political Rights (122)

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Afghanistan	24 January 1983 (a)	24 April 1983
Albania	4 October 1991 (a)	4 January 1992
Algeria	12 September 1989	12 December 1989
Angola	10 January 1992 (a)	10 April 1992
Argentina	8 August 1986	8 November 1986
Armenia	23 June 1993	23 September 1993
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Azerbaijan	13 August 1992 (a)	13 November 1992
Barbados	5 January 1973 (a)	23 March 1976
Belarus	12 November 1973	23 March 1976
Belgium	21 April 1983	21 July 1983
Benin	12 March 1992 (a)	12 June 1992
Bolivia	12 August 1982 (a)	12 November 1982
Brazil	24 January 1992 (a)	24 April 1992
Bulgaria	21 September 1970	23 March 1976
Burundi	9 May 1990 (a)	9 August 1990
Cambodia	26 May 1992 (a)	26 August 1992
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	26 March 1992 (a)	26 June 1992
Croatia	12 October 1992 (d)	8 October 1991
Cyprus	2 April 1969	23 March 1976
Czech Republic	22 February 1993 (d)	1 January 1993
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981

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* See para. 41 above.

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Denmark	6 January 1972	23 March 1976
Dominica	17 June 1993 (a)	17 September 1993
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 (a)	25 December 1987
Estonia	21 October 1991 (a)	21 January 1992
Ethiopia	11 June 1993 (a)	11 September 1993
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
Germany	17 December 1973	23 March 1976
Grenada	6 September 1991 (a)	6 December 1991
Guatemala	6 May 1992 (a)	5 August 1992
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991 (a)	6 May 1991
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran, Islamic Republic of	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990
Israel	3 October 1991 (a)	3 January 1992
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Latvia	14 April 1992 (a)	14 July 1992
Lebanon	3 November 1972 (a)	23 March 1976
Lesotho	9 September 1992 (a)	9 December 1992
Libyan Arab Jamahiriya	15 May 1970 (a)	23 March 1976
Lithuania	20 November 1991 (a)	20 February 1992
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Malta	13 September 1990 (a)	13 December 1990

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Mauritius	12 December 1973 (a)	23 March 1976
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Mozambique	21 July 1993 (a)	21 October 1993
Nepal	14 May 1991	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Nigeria	29 July 1993 (a)	29 October 1993
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 June 1992 (a)	10 September 1992
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990 (a)	10 July 1990
Republic of Moldova	26 January 1993 (a)	26 April 1993
Romania	9 December 1974	23 March 1976
Russian Federation	16 October 1973	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Seychelles	5 May 1992 (a)	5 August 1992
Slovakia	28 May 1993 (d)	1 January 1993
Slovenia	6 July 1992 (d)	25 June 1991
Somalia	24 January 1990 (a)	24 April 1990
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Sudan	18 March 1986 (a)	18 June 1986
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Switzerland	18 June 1992 (a)	18 September 1992
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Togo	24 May 1984 (a)	24 August 1984
Trinidad and Tobago	21 December 1978 (a)	21 March 1979
Tunisia	18 March 1969	23 March 1976

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Ukraine	12 November 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
United States of America	8 June 1992	8 September 1992
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 (a)	24 December 1982
Yemen	9 February 1987 (a)	9 May 1987
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984
Zimbabwe	13 May 1991 (a)	13 August 1991

B. States which have made the declaration under article 41 of the Covenant (42)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Australia	28 January 1993	Indefinitely
Austria	10 September 1978	Indefinitely
Belarus	30 September 1992	Indefinitely
Belgium	5 March 1987	Indefinitely
Bulgaria	12 May 1993	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely
Congo	7 July 1989	Indefinitely
Czech Republic	1 January 1993	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany	28 March 1979	27 March 1996
Guyana	10 May 1993	Indefinitely
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely

State party	Valid from	Valid until
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Russian Federation	1 October 1991	Indefinitely
Senegal	5 January 1981	Indefinitely
Slovenia	6 July 1992	Indefinitely
Spain	25 January 1985	25 January 1993
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
Switzerland	18 September 1992	18 September 1997
Tunisia	24 June 1993	Indefinitely
Ukraine	28 July 1992	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely
United States of America	8 September 1992	Indefinitely
Zimbabwe	20 August 1991	Indefinitely

C. States parties to the Optional Protocol (73)

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Algeria	12 September 1989 (a)	12 December 1990
Angola	10 January 1992 (a)	10 April 1992
Argentina	8 August 1986 (a)	8 November 1986
Armenia	23 June 1993	23 September 1993
Australia	25 September 1991 (a)	25 December 1991
Austria	10 December 1987	10 March 1988
Barbados	5 January 1973 (a)	23 March 1976
Belarus	30 September 1992 (a)	30 December 1992
Benin	12 March 1992 (a)	12 June 1992
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	26 March 1992 (a)	26 June 1992
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	28 May 1992 (a)	28 August 1992
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	15 April 1992	15 July 1992
Czech Republic	22 February 1993 (d)	1 January 1993

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September 1987 (a)	25 December 1987
Estonia	21 October 1991 (a)	21 January 1992
Finland	19 August 1975	23 March 1976
France	17 February 1984 (a)	17 May 1984
Gambia	9 June 1988 (a)	9 September 1988
Guinea	17 June 1993	17 September 1993
Guyana	10 May 1993 (a)	10 August 1993
Hungary	7 September 1988 (a)	7 December 1988
Iceland	22 August 1979 (a)	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Libyan Arab Jamahiriya	16 May 1989 (a)	16 August 1989
Lithuania	20 November 1991 (a)	20 February 1992
Luxembourg	18 August 1983 (a)	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malta	13 September 1990 (a)	13 December 1990
Mauritius	12 December 1973 (a)	23 March 1976
Mongolia	16 April 1991 (a)	16 July 1991
Nepal	14 May 1991 (a)	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 (a)	26 August 1989
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989 (a)	22 November 1989
Poland	7 November 1991 (a)	7 February 1992
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990 (a)	10 July 1990
Romania	20 July 1993 (a)	20 October 1993
Russian Federation	1 October 1991 (a)	1 January 1992
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Seychelles	5 May 1992 (a)	5 August 1992
Slovakia	28 May 1993 (d)	1 January 1993
Slovenia	16 July 1993 (a)	16 October 1993
Somalia	24 January 1990 (a)	24 April 1990
Spain	25 January 1985 (a)	25 April 1985
Suriname	28 December 1976 (a)	28 March 1977

State party	Date of receipt of the instrument of ratification or accession (a) or succession (d)	Date of entry into force
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 (a)	30 June 1988
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
Ukraine	25 July 1991 (a)	25 October 1991
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

D. Status of the Second Optional Protocol aiming at the abolition of the death penalty (19) 1/

State party	Signature	Date of receipt of the instrument of ratification or accession (a)
Australia	-	2 October 1990 (a)
Austria	8 April 1991	2 March 1993
Belgium	12 July 1990	-
Costa Rica	14 February 1990	-
Denmark	13 February 1990	-
Ecuador	-	23 February 1993 (a)
Finland	13 February 1990	4 April 1991
Germany	13 February 1990	18 August 1992
Honduras	10 May 1990	-
Iceland	30 January 1991	2 April 1991
Ireland	-	18 June 1993 (a)
Italy	13 February 1990	-
Luxembourg	13 February 1990	12 February 1992
Mozambique	-	21 July 1993 (a)
Netherlands	9 August 1990	26 March 1991
New Zealand	22 February 1990	22 February 1990
Nicaragua	21 February 1990	-
Norway	13 February 1990	5 September 1991
Panama	-	21 January 1993 (a)
Portugal	13 February 1990	17 October 1990
Romania	15 March 1990	27 February 1991
Spain	23 February 1990	11 April 1991
Sweden	13 February 1990	11 May 1990
Uruguay	13 February 1990	21 January 1993
Venezuela	7 June 1990	22 February 1993

Notes

1/ The Second Optional Protocol was adopted and opened for signature, ratification or accession in New York on 15 December 1989 and entered into force three months after the date of deposit with the Secretary-General of the tenth instrument of ratification or accession, that is, on 11 July 1991.

Annex II

MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 1993-1994

A. Membership

Name of the member	Country of nationality
Mr. Francisco José AGUILAR URBINA**	Costa Rica
Mr. Nisuke ANDO*	Japan
Mr. Marco Tulio BRUNI CELLI**	Venezuela
Mrs. Christine CHANET*	France
Mr. Vojin DIMITRIJEVIC*	Yugoslavia
Mr. Omran EL SHAFEI*	Egypt
Ms. Elizabeth EVATT**	Australia
Mr. János FODOR**	Hungary
Mr. Laurel B. FRANCIS**	Jamaica
Mr. Kurt HERNDL*	Austria
Mrs. Rosalyn HIGGINS**	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Birame NDIAYE*	Senegal
Mr. Fausto POCAR**	Italy
Mr. Julio PRADO VALLEJO*	Ecuador
Mr. Waleed SADI*	Jordan
Mr. Bertil WENNERGREN*	Sweden

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* Term expires on 31 December 1994.

** Term expires on 31 December 1996.

B. Officers

The officers of the Committee, elected for two-year terms at the 1206th meeting, held on 22 March 1993, are as follows:

Chairman: Mr. Nisuke Ando

Vice-Chairmen: Mr. Vojin Dimitrijevic
Mr. Omran El Shafei
Mr. Bertil Wennergren

Rapporteur: Mr. Francisco José Aguilar Urbina

Annex III

AGENDAS OF THE FORTY-SIXTH, FORTY-SEVENTH AND FORTY-EIGHTH SESSIONS OF THE HUMAN RIGHTS COMMITTEE

A. Forty-sixth session

1. At its 1177th meeting, on 19 October 1992, the Committee adopted the following provisional agenda (see CCPR/C/80), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-sixth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.
6. Preparatory activities relating to the World Conference on Human Rights.

B. Forty-seventh session

1. At its 1206th meeting, on 22 March 1993, the Committee adopted the following provisional agenda (see CCPR/C/85), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-seventh session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected members of the Committee in accordance with article 38 of the Covenant.
3. Election of the Chairman and other officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Action by the General Assembly at its forty-seventh session:
    - (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant;
    - (b) Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to such instruments.
7. Submission of reports by States parties under article 40 of the Covenant.

8. Consideration of reports submitted by States parties under article 40 of the Covenant.

9. Consideration of communications under the Optional Protocol to the Covenant.

10. Preparatory activities relating to the World Conference on Human Rights.

11. Future meetings of the Committee.

C. Forty-eighth session

3. At its 1234th meeting, on 12 July 1993, the Committee adopted the following provisional agenda (see CCPR/C/86), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-eighth session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications under the Optional Protocol to the Covenant.

6. World Conference on Human Rights.

7. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

Annex IV

SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT DURING THE PERIOD UNDER REVIEW 1/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
A. Initial reports of States parties due in 1984			
Gabon	20 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988 (9) 21 November 1988 (10) 10 May 1989 (11) 12 December 1989 (12) 15 May 1990 (13) 23 November 1990 (14) 17 May 1991 (15) 21 November 1991 (16) 25 May 1992 (17) 14 December 1992 (18) 15 June 1993
B. Initial reports of States parties due in 1988			
Equatorial Guinea	24 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990 (4) 23 November 1990 (5) 17 May 1991 (6) 21 November 1991 (7) 25 May 1992 (8) 14 December 1992 (9) 15 June 1993
C. Initial reports of States parties due in 1991			
Somalia	23 April 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993
Malta	12 December 1991	18 May 1993	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted

D. Initial reports of States parties due in 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Haiti	5 May 1992	Not yet received	(1) 14 December 1992 (2) 12 May 1993
Slovenia	24 June 1992	Not yet received	-
Zimbabwe	12 August 1992	Not yet received	(1) 14 December 1992 (2) 15 June 1993
Nepal	13 August 1992	Not yet received	(1) 14 December 1992 (2) 15 June 1993
Croatia	7 October 1992	Not yet received	-
Grenada	5 December 1992	Not yet received	(1) 15 June 1993

E. Initial reports of States parties due in 1993 (within the period under review) 2/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Israel	2 January 1993	Not yet received	(1) 15 June 1993
Albania	3 January 1993	Not yet received	(1) 15 June 1993
Estonia	20 January 1993	Not yet received	(1) 15 June 1993
Lithuania	19 February 1993	Not yet received	(1) 15 June 1993
Angola	9 April 1993	Not yet received	-
Brazil	23 April 1993	Not yet received	-
Benin	11 June 1993	Not yet received	-
Côte d'Ivoire	25 June 1993	Not yet received	-
Latvia	13 July 1993	12 July 1993	-

F. Second periodic reports of States parties due in 1983

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Libyan Arab Jamahiriya	4 February 1983	4 February 1993	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
G. Second periodic reports of States parties due in 1984			
Bulgaria	28 April 1984	25 January 1993	-
Cyprus	18 August 1984	19 July 1993	-
Syrian Arab Republic	18 August 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989 (12) 12 December 1989 (13) 15 May 1990 (14) 23 November 1990 (15) 17 May 1991 (16) 21 November 1991 (17) 25 May 1992 (18) 14 December 1992 (19) 15 June 1993
H. Second periodic reports of States parties due in 1985			
New Zealand-Cook Islands	27 March 1985	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992 (7) 14 December 1992 (8) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Gambia	21 June 1985	Not yet received	(1) 9 August 1985
			(2) 18 November 1985
			(3) 6 May 1986
			(4) 8 August 1986
			(5) 1 May 1987
			(6) 1 December 1987
			(7) 6 June 1988
			(8) 21 November 1988
			(9) 10 May 1989
			(10) 12 December 1989
			(11) 15 May 1990
			(12) 23 November 1990
			(13) 17 May 1991
			(14) 21 November 1991
			(15) 25 May 1992
			(16) 14 December 1992
			(17) 15 June 1993
Suriname	2 August 1985	Not yet received	(1) 18 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991
			(13) 21 November 1991
			(14) 25 May 1992
			(15) 14 December 1992
			(16) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
I. Second periodic reports of States parties due in 1986			
Lebanon	21 March 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 13 August 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991
			(13) 21 November 1991
			(14) 25 May 1992
			(15) 14 December 1992
			(16) 15 June 1993
Kenya	11 April 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 1 December 1987
			(5) 6 June 1988
			(6) 21 November 1988
			(7) 10 May 1989
			(8) 12 December 1989
			(9) 15 May 1990
			(10) 23 November 1990
			(11) 17 May 1991
			(12) 21 November 1991
			(13) 25 May 1992
			(14) 14 December 1992
			(15) 15 June 1993
Mali	11 April 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 1 December 1987
			(5) 6 June 1988
			(6) 21 November 1988
			(7) 10 May 1989
			(8) 12 December 1989
			(9) 15 May 1990
			(10) 23 November 1990
			(11) 17 May 1991
			(12) 21 November 1991
			(13) 25 May 1992
			(14) 14 December 1992
			(15) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Jamaica	1 August 1986	Not yet received	(1) 1 May 1987
			(2) 1 December 1987
			(3) 6 June 1988
			(4) 21 November 1988
			(5) 10 May 1989
			(6) 12 December 1989
			(7) 15 May 1990
			(8) 23 November 1990
			(9) 17 May 1991
			(10) 21 November 1991
			(11) 25 May 1992
			(12) 14 December 1992
			(13) 15 June 1993
Netherlands-Antilles	31 October 1986	Not yet received	(1) 12 December 1989
			(2) 15 May 1990
			(3) 23 November 1990
			(4) 21 November 1991
			(5) 25 May 1992
			(6) 14 December 1992
			(7) 15 June 1993

J. Second periodic reports of States parties due in 1987

Guyana	10 April 1987	Not yet received	(1) 1 May 1987
			(2) 1 December 1987
			(3) 6 June 1988
			(4) 21 November 1988
			(5) 10 May 1989
			(6) 12 December 1989
			(7) 15 May 1990
			(8) 23 November 1990
			(9) 17 May 1991
			(10) 21 November 1991
			(11) 25 May 1992
			(12) 14 December 1992
			(13) 15 June 1993
Iceland	30 October 1987	2 June 1993	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Democratic People's Republic of Korea	13 December 1987	Not yet received	(1) 23 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991 (8) 21 November 1991 (9) 25 May 1992 (10) 14 December 1992 (11) 15 June 1993

K. Second periodic reports of States parties due in 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
El Salvador 3/	31 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990 (4) 23 November 1990 (5) 17 May 1991 (6) 21 November 1991 (7) 25 May 1992 (8) 14 December 1992 (9) 12 May 1993

L. Second periodic reports of States parties due in 1989

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Central African Republic 4/	9 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992 (7) 14 December 1992 (8) 15 June 1993
Gabon 5/	20 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992 (7) 14 December 1992 (8) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
		M. Second periodic reports of States parties due in 1990	
Congo	4 January 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992 (6) 14 December 1992 (7) 15 June 1993
Zambia	9 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Bolivia 6/	13 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Togo	23 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Republic of Cameroon	26 September 1990	18 February 1993	-
		N. Second periodic reports of States parties due in 1991	
Viet Nam 7/	31 July 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Saint Vincent and the Grenadines 8/	31 October 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
O. Second periodic reports of States parties due in 1992			
San Marino	17 January 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
Niger 9/	6 June 1992	-	-
Sudan	17 June 1992	Not yet received	(1) 14 December 1992 (2) 12 May 1993
Argentina	7 November 1992	Not yet received	(1) 14 December 1992
P. Second periodic reports of States parties due in 1993 (within the period under review) 10/			
Philippines	22 January 1993	Not yet received	(1) 15 June 1993
Yemen	8 May 1993	10 May 1993	-
Equatorial Guinea 5/	24 December 1993	Not yet received	-
Q. Third periodic reports of States parties due in 1988			
Libyan Arab Jamahiriya	4 February 1988	Not yet received	-
Iran (Islamic Republic of) 11/	21 March 1988	-	-
Lebanon 12/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991 (8) 21 November 1991 (9) 25 May 1992 (10) 14 December 1992 (11) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
	R. Third periodic reports of States parties due in 1989		
Bulgaria 13/	28 April 1989	-	-
Romania	28 April 1989	30 July 1992	-
Cyprus	18 August 1989	Not yet received	-
Syrian Arab Republic 12/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992 (7) 14 December 1992 (8) 15 June 1993
	S. Third periodic reports of States parties due in 1990		
Trinidad and Tobago	20 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992 (6) 14 December 1992 (7) 15 June 1993
New Zealand	27 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992 (6) 14 December 1992 (7) 15 June 1993
Gambia 12/	21 June 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Mauritius 14/	18 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Suriname 12/	2 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Denmark	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992 (5) 14 December 1992 (6) 15 June 1993
Italy	1 November 1990	23 October 1992	-
Venezuela 15/	1 November 1991	-	-

T. Third periodic reports of States parties due in 1991

El Salvador 12/	28 February 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992 (4) 14 December 1992 (5) 12 May 1993
Barbados	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992 (4) 14 December 1992 (5) 15 June 1993
Kenya 12/	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992 (4) 14 December 1992 (5) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Mali 12/	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992
United Republic of Tanzania 16/	11 April 1991	-	-
Nicaragua	11 June 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993
Zaire 17/	31 July 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 12 May 1993
Jamaica 12/	1 August 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993
Portugal	1 August 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993
Costa Rica 18/	2 August 1991	24 November 1992	
Sri Lanka	10 September 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 15 June 1993
Netherlands	31 October 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992 (3) 14 December 1992 (4) 15 June 1993
Australia	12 November 1991	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
U. Third periodic reports of States parties due in 1992			
France	3 February 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
India 19/	31 March 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
Panama 20/	31 March 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
Guyana 12/	10 April 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
Rwanda	10 April 1992	Not yet received	(1) 25 May 1992 (2) 14 December 1992 (3) 15 June 1993
Madagascar 21/	31 July 1992	Not yet received	(1) 14 December 1992 (2) 15 June 1993
Central African Republic 12/	7 August 1992	Not yet received	(1) 14 December 1992 (2) 15 June 1993
Iceland	30 October 1992	-	-
Democratic Peoples's Republic of Korea 12/	13 December 1992	Not yet received	(1) 15 June 1993
Morocco 22/	31 December 1992	20 July 1993	

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
V. Third periodic reports of States parties due in 1993 (within the period under review) 23/			
Saint Vincent and the Grenadines 12/	8 February 1993	Not yet received	(1) 15 June 1993
Austria	9 April 1993	Not yet received	-
Peru	9 April 1993	Not yet received	-
Egypt 24/	13 April 1993	-	-
W. Fourth periodic reports of States parties due in 1993 (within the period under review) 25/			
Libyan Arab Jamahiriya 26/	4 February 1993	Not yet received	-
Tunisia	4 February 1993	23 March 1993	-
Iran (Islamic Republic of) 26/	21 March 1993	-	-
Lebanon 27/	21 March 1993	Not yet received	-
Panama 26/	6 June 1993	Not yet received	-

Notes

1/ From 1 August 1992 to 30 July 1993 (end of the forty-eighth session).

2/ For a complete list of States parties whose initial reports are due in 1993, see CCPR/C/81/Rev.1.

3/ At its twenty-ninth session, the Committee decided to extend the deadline for the submission of the second periodic report of El Salvador from 28 February 1986 to 31 December 1988.

4/ At its thirty-second session (794th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of the Central African Republic from 7 August 1987 to 9 April 1989.

5/ The State party's initial report has not yet been received.

6/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Bolivia from 11 November 1988 to 13 July 1990.

7/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Viet Nam from 23 December 1988 to 31 July 1991.

8/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Saint Vincent and the Grenadines from 8 February 1988 to 31 October 1991.

9/ Pursuant to the Committee's decision taken at its forty-seventh session (1215th meeting), the new date for the submission of the second periodic report of Niger is 31 March 1994.

10/ For a complete list of States parties whose second periodic reports are due in 1993, see CCPR/C/82.

11/ Pursuant to the Committee's decision taken at its forty-eighth session (1258th meeting), the new date for the submission of the third periodic report of the Islamic Republic of Iran is 31 December 1994.

12/ The State party's second periodic report has not yet been received.

13/ Pursuant to the Committee's decision taken at its forty-eighth session (1258th meeting), the new date for the submission of the third periodic report of Bulgaria is 31 December 1994.

14/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Mauritius from 4 November 1988 to 18 July 1990.

15/ Pursuant to the Committee's decision taken at its forty-sixth session (1205th meeting), the new date for the submission of the third periodic report of Venezuela is 31 December 1993.

16/ Pursuant to the Committee's decision taken at its forty-sixth session (1205th meeting), the new date for the submission of the third periodic report of the United Republic of Tanzania is 31 December 1993.

17/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Zaire from 30 January 1988 to 31 July 1991.

18/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Costa Rica from 2 August 1990 to 2 August 1991.

19/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of India from 9 July 1990 to 31 March 1992.

20/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Panama from 6 June 1988 to 31 March 1992.

21/ At its forty-third session (1112th meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Madagascar from 3 August 1988 to 31 July 1992.

22/ At its forty-third session (1112th meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Morocco from 31 October 1991 to 31 December 1992.

23/ For a complete list of States parties whose third periodic reports are due in 1993, see CCPR/C/83.

24/ Pursuant to the Committee's decision taken at its forty-eighth session (1258th meeting), the new date for the submission of the third periodic report of Egypt is 31 December 1994.

25/ For a complete list of States parties whose fourth periodic reports are due in 1993, see CCPR/C/83.

26/ The State party's third periodic report has not yet been received.

27/ The State party's second and third periodic reports have not yet been received.

Annex V

STATUS OF REPORTS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE

States parties	Date due	Date of submission	Meetings at which considered
		A. Initial reports	
Niger	9 June 1987	3 May 1991	1208th and 1212th (forty-seventh session)
Burundi	8 August 1991	4 November 1991	1178th, 1182nd and 1183rd (forty-sixth session)
Ireland	7 March 1991	22 June 1992	1235th, 1236th and 1239th (forty-eighth session)
Malta	12 December 1991	18 May 1993	Not yet considered
Latvia	13 July 1993	12 July 1993	Not yet considered
		B. Second periodic reports	
Iran (Islamic Republic of)	21 March 1983	12 May 1992	1193rd-1196th, 1230th-1231st and 1251st-1253rd (forty-sixth, forty-seventh and forty-eighth sessions)
Libyan Arab Jamahiriya	4 February 1983	4 February 1993	Not yet considered
Cyprus	18 August 1984	18 July 1993	Not yet considered
Bulgaria	28 April 1984	25 January 1993	1248th-1250th (forty-eighth session)
Venezuela	1 November 1985	19 December 1991	1197th-1199th (forty-sixth session)

States parties	Date due	Date of submission	Meetings at which considered
United Republic of Tanzania	11 April 1986	4 June 1991	1189th-1191st (forty-sixth session)
Iceland	30 October 1987	2 June 1993	Not yet considered
Egypt	13 April 1988	23 March 1992	1244th-1247th (forty-eighth session)
Afghanistan	23 April 1989	23 March 1992	Not yet considered
Guinea	30 September 1989	30 April 1991	1222nd-1224th (forty-seventh session)
Luxembourg	17 November 1989	23 July 1991	1187th-1188th (forty-sixth session)
Cameroon	26 September 1990	18 February 1993	Not yet considered
Yemen	8 May 1993	10 May 1993	Not yet considered

C. Third periodic reports

States parties	Date due	Date of submission	Meetings at which considered
Romania	28 April 1989	30 July 1992	Not yet considered
Uruguay	21 March 1990	26 March 1991	1216th-1218th (forty-seventh session)
Senegal	4 April 1990	2 April 1991	1179th-1181st (forty-sixth session)
Hungary	2 August 1990	28 October 1991	1240th-1242nd (forty-eighth session)
Italy	1 November 1990	23 October 1992	Not yet considered
Norway	1 August 1991	28 January 1992	Not yet considered
Costa Rica	2 August 1991	24 November 1992	Not yet considered
Japan	31 October 1991	16 December 1991	Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
Dominican Republic	31 October 1991	15 June 1992	1213th-1215th (forty-seventh session)
Jordan	22 January 1992	26 May 1992	Not yet considered
Mexico	22 June 1992	23 June 1992	Not yet considered
Morocco	31 December 1992	20 July 1993	Not yet considered

D. Fourth periodic reports

States parties	Date due	Date of submission	Meetings at which considered
Tunisia	4 February 1993	23 March 1993	Not yet considered

E. Reports submitted pursuant to a special decision taken by the Committee 1/

States parties	Date due	Date of submission	Meetings at which considered
Bosnia and Herzegovina		30 October 1992	1200th (forty-sixth session)
Croatia		30 October 1992	1201st-1202nd (forty-sixth session)
Federal Republic of Yugoslavia (Serbia and Montenegro)		30 October 1992	1202nd (forty-sixth session)

F. Additional information submitted subsequent to the examination of initial reports by the Committee 2/

States parties	Date due	Date of submission	Meetings at which considered
Kenya		4 May 1982	Not yet considered
Gambia		5 June 1984	Not yet considered

G. Core documents received from States parties to the Covenant 3/

States parties	Date due	Date of submission	Meetings at which considered
Austria			Not yet considered
Ecuador			Not yet considered
Luxembourg			1187th-1188th (forty-sixth session)

States parties	Date due	Date of submission	Meetings at which considered
Norway			Not yet considered
Spain			Not yet considered
Sweden			Not yet considered
United Kingdom of Great Britain and Northern Ireland			Not yet considered
Uruguay			1216th-1218th (forty-seventh session)
Venezuela			1197th-1199th (forty-sixth session)
Panama			Not yet considered
Ireland			1235th, 1236th and 1239th (forty-eighth session)
Burundi			1178th, 1182nd and 1183rd (forty-sixth session)
France			Not yet considered
Jordan			Not yet considered
Egypt			1244th-1247th (forty-eighth session)
Portugal			Not yet considered
Zambia			Not yet considered
Morocco			Not yet considered
Poland			Not yet considered
Lebanon			Not yet considered
Cyprus			Not yet considered
Romania			Not yet considered
Mexico			Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
Paraguay			Not yet considered
Hungary			1240th-1242nd (forty-eighth session)
Switzerland			Not yet considered
Iceland			Not yet considered
Madagascar			Not yet considered

Notes

1/ Special decision adopted by the Committee on 7 October 1992 (see para. 36 and annex VII).

2/ At its twenty-fifth session (601st meeting), the Committee decided to consider additional information submitted subsequent to the examination of initial reports together with the State party's second periodic report.

3/ Core documents received from States parties under the consolidated guidelines for the initial part of the reports of States parties are to be considered by the treaty bodies, including the Committee, together with the State party's substantive report.

Annex VI

GENERAL COMMENTS ADOPTED UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1/

General comment No. 22 (48) (art. 18) 2/ 3/

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18 (1) is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established or represent religious minorities that may be the subject of hostility by a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19 (1). In accordance with articles 18 (2) and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

4. The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulas and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief

with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18 (2) bars coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant are similarly inconsistent with article 18 (2). The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18 (4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18 (4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18 (1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. According to article 20, no manifestation of religions or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its general comment No. 11 (19), States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that article 18, paragraph 3, is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18 (3), both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the

majority of the population shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringements of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed toward those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such a right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right of conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.

Notes

1/ For the nature and purpose of the general comments, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40* (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of general comments and their use, see ibid., *Thirty-ninth Session, Supplement No. 40* (A/39/40 and Corr.1 and 2), paras. 541-557. For the text of the general comments already adopted by the Committee, see ibid., *Thirty-sixth Session, Supplement No. 40* (A/36/40), annex VII; ibid., *Thirty-seventh Session, Supplement No. 40* (A/37/40), annex. V; ibid., *Thirty-eighth Session, Supplement No. 40* (A/38/40), annex VI; ibid., *Thirty-ninth Session, Supplement No. 40* (A/39/40 and Corr.1 and 2), annex VI;

ibid., *Fortieth Session, Supplement No. 40* (A/40/40), annex VI; ibid., *Forty-first Session, Supplement No. 40* (A/41/40), annex VI; ibid., *Forty-third Session, Supplement No. 40* (A/43/40), annex VI; ibid., *Forty-fourth Session*, *Supplement No. 40* (A/44/40), annex VI; ibid., *Forty-fifth Session, Supplement No. 40* (A/45/40), annex VI; and ibid., *Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI. Also issued in documents CCPR/C/21/Rev.1 and CCPR/C/21/Rev.1/Add.1, 2, 3 and 4.

2/ Adopted by the Committee at its 1247th meeting (forty-eighth session), on 20 July 1993.

3/ The number in parenthesis indicates the session at which the general comment was adopted.

Annex VII

SPECIAL DECISIONS BY THE HUMAN RIGHTS COMMITTEE CONCERNING REPORTS OF PARTICULAR STATES

A. Bosnia and Herzegovina 1/

The Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee,

Deeply concerned by recent and current events in the territory of the former Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights,

Noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant,

Acting under article 40, paragraph 1 (b) of the Covenant,

1. Requests the Government of the Republic of Bosnia and Herzegovina to submit a short report, as soon as possible and not later than 30 October 1992, on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, on the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the International Covenant on Civil and Political Rights;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant;

2. Invites the Government of Bosnia and Herzegovina to appear, through its representatives, before the Human Rights Committee during the third week of its forthcoming session (2-4 November 1992);

3. Requests the Secretary-General to bring the present decision to the attention of the Government of Bosnia and Herzegovina.

B. Croatia 1/

The Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee,

Deeply concerned by recent and current events in the territory of the former Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights, Noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant,

Acting under article 40, paragraph 1 (b) of the Covenant,

1. Requests the Government of Croatia to submit a short report, as soon as possible and not later than 30 October 1992, on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, in the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the International Covenant on Civil and Political Rights;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant;

2. Invites the Government of Croatia to appear, through its representatives, before the Human Rights Committee during the third week of its forthcoming session (2-4 November 1992);

3. Requests the Secretary-General to bring the present decision to the attention of the Government of Croatia.

C. Federal Republic of Yugoslavia (Serbia and Montenegro) 1/

The Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee,

Deeply concerned by recent and current events in the territory of the former Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights,

Noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant,

Acting under article 40, paragraph 1 (b) of the Covenant,

1. Requests the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit a short report, as soon as possible and not later than 30 October 1992, on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, in the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the International Covenant on Civil and Political Rights;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant;

2. Invites the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to appear, through its representatives, before the Human Rights Committee during the third week of its forthcoming session (2-4 November 1992);

3. Requests the Secretary-General to bring the present decision to the attention of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).

Notes

1/ Adopted on 7 October 1992 by the Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee, and confirmed on 19 October 1992 (1178th meeting).

Annex VIII

LETTERS FROM THE CHAIRMAN OF THE COMMITTEE CONCERNING OVERDUE REPORTS

A. Letter dated 12 May 1993 from the Chairman of the Committee to the Minister of Foreign Affairs of Haiti, whose initial report was overdue

"On behalf of the Human Rights Committee, which was established under the International Covenant on Civil and Political Rights, I have the honour to draw Your Excellency's attention to a matter to which the Committee attaches the greatest importance.

"Your Excellency will be aware that, by virtue of article 40 of the Covenant, each State party undertakes to submit a report on the measures it has adopted which give effect to the provisions of the Covenant within one year of the Covenant's entry into force. The Covenant entered into force for Haiti on 6 May 1991 and the initial report should therefore have been submitted on 5 May 1992.

"Unfortunately, to the Committee's great regret, the initial report of the Government of Haiti has not yet been received.

"The submission of such reports is not only a solemn legal obligation which each State assumes on ratifying the Covenant, it is also vital to the performance of the Committee's essential function of establishing a positive dialogue with States parties in the field of human rights.

"In view of the great importance of this matter and the difficulties impeding the implementation of the Covenant in Haiti, I earnestly hope that the initial report of Haiti will be submitted as soon as possible.

"I would be most grateful if you would inform me of the intentions of the Government of Haiti in this regard as soon as possible. (...)

(*Signed*) Nisuke Ando
Chairman
Human Rights Committee"

B. Letter dated 12 May 1993 from the Chairman of the Committee to the Ministers of Foreign Affairs of El Salvador, the Sudan and Zaire, whose second or third periodic reports were overdue

"On behalf of the Human Rights Committee, which was established under the International Covenant on Civil and Political Rights, I have the honour to invite Your Excellency's attention to a matter to which the Committee attaches special importance.

"Under article 40 of the Covenant, each State party undertakes to submit reports on the measures it has adopted to give effect to the rights recognized therein. Paragraph 1 (a) of that article provides for the submission of an initial report within one year of entry into force of the Covenant for the State party concerned, whereas paragraph 1 (b) calls for the submission of subsequent reports 'whenever the Committee so requests'.

"At its thirteenth session held in July 1981, the Human Rights Committee decided that States parties should submit periodic reports concerning the implementation of the provisions of the Covenant every five years. The due date established for the submission of _____'s _____ periodic report was _______. Unfortunately, that report has not yet been received.

"The submission of such reports is indispensable for continuing the Committee's constructive dialogue with States parties in the field of human rights. The non-submission of _____'s _____ periodic report is therefore a matter of great concern to the Committee. In view of the importance of this matter and the special difficulties being encountered in the implementation of the Covenant in _____, it is my most earnest hope that its _____ periodic report will be submitted in the near future. (...)

(Signed) Nisuke Ando
Chairman
Human Rights Committee"

Annex IX

AMENDED RULES OF PROCEDURE

At its 1233rd meeting (forty-seventh session), held on 8 April 1993, the Human Rights Committee amended its rules of procedure by inserting a new paragraph 2 in rule 66. The text of rule 66, as amended, reads as follows:

> "1. The States parties to the Covenant shall submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant.
>
> "2. Requests for submission of a report under article 40, paragraph 1 (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. In the case of an exceptional situation when the Committee is not in session, a request may be made through the Chairman, acting in consultation with the members of the Committee.
>
> "3. Whenever the Committee requests States parties to submit reports under article 40, paragraph 1 (b), of the Covenant, it shall determine the dates by which such reports shall be submitted.
>
> "4. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and contents of the reports to be submitted under article 40 of the Covenant."

Annex X

DOCUMENTS SUBMITTED BY THE HUMAN RIGHTS COMMITTEE TO THE WORLD CONFERENCE ON HUMAN RIGHTS

A. Work of the Human Rights Committee under article 40 of the Covenant on Civil and Political Rights

1. The following information concerning the methods used by the Human Rights Committee in carrying out its work relating to the consideration of reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights and highlighting some of the difficulties currently being encountered by the Committee is presented for the consideration of the World Conference.

Working methods of the Committee relating to the consideration of reports submitted by States parties under article 40 of the Covenant

2. The consideration of reports submitted under article 40 of the Covenant takes place in public meetings and in the presence of representatives of the State party concerned. The purpose of such meetings is to establish a constructive dialogue between the Committee and the State party. The main function of the Committee is to assist State parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them various issues relating to the enjoyment of the rights enshrined in the Covenant. In fulfilling this function, members of the Committee pose questions to the representatives of the State party in order to obtain information or clarification on any factual or legal matter or factor that may affect the implementation of the Covenant. In dealing with periodic reports, the Committee identifies in advance the various matters which might most usefully be discussed with the representatives of the State party.

Lists of issues to be taken up in connection with the consideration of States parties' periodic reports

3. The Committee started the practice of preparing lists of issues in connection with the consideration of periodic reports in 1983. For this purpose, it establishes at each of its sessions a working group consisting of four members, which meets for five days during the week preceding each of the Committee's three sessions held during the year. The lists are divided into chapters, each covering a group of related articles of the Covenant. The lists are transmitted to the representatives of the reporting States, after approval by the Committee, and are considered by the Committee as non-exhaustive. Issues are treated one by one during the consideration of the State party's report in a manner providing for immediate replies, where possible, by the representatives of the State party. The members of the Committee have the opportunity to seek additional clarifications under each issue and to put supplementary questions.

4. In 1989, the Committee adopted a methodology for considering third periodic reports similar to that used for second periodic reports, but stressed the need to concentrate on developments that occurred after the submission of the second periodic report. Such lists do not include issues extensively dealt with during the consideration of the previous report, except those identified as giving rise to concern. On the basis of further experience, the Committee has decided more recently that the lists of issues should be made more concise and precise, focusing, in particular, on the remaining factors and difficulties that may be affecting the implementation of the Covenant.

Concluding observations on States parties' reports

5. Since its forty-fourth session (March/April 1992), the Committee has been adopting comments reflecting the views of the Committee as a whole on each State party report considered during a given session. Such comments are additional to, and do not replace, comments made by individual members at the conclusion of the consideration of a report. A rapporteur is selected in each case to draft a text, in consultation with the Chairman and other members, for adoption by the Committee in closed meeting. Such comments are dispatched to the State party concerned as soon as practicable, published in a separate document and included in the annual report of the Committee, together with the concluding observations by individual members. Comments drafted during a given session are normally adopted by the Committee on the penultimate day of the session.

6. The comments of the Committee provide a general evaluation of a State party's report and of the dialogue with the delegation and make note of positive developments that may have occurred during the period under review of factors and difficulties affecting the implementation of the Covenant, and of specific issues of concern relating to the application of the provisions of the Covenant. They also include suggestions and recommendations to the State party concerned.

The Committee's procedures in dealing with emergency situations

7. During the last two years, and in the light of recent or current events indicating that the enjoyment of human rights protected under the Covenant had been seriously affected in certain States parties, the Committee has resorted to the practice of requesting the States parties concerned to submit reports on the situation urgently, generally within three months. Such decisions have been taken regarding, in chronological order, Iraq (11 April 1991), the Federal Republic of Yugoslavia (4 November 1991), Peru (10 April 1992), Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) (6 October 1992). In all cases the States concerned complied with the Committee's request and participated in the consideration of the report. Additionally, the Committee has agreed that, if an exceptional situation arises in the interim between sessions, the Chairman, acting in consultation with the members of the Committee, may direct a request for the submission of a report under article 40, paragraph 1 (b), of the Covenant by the State party concerned. The Committee has also given its support to the Secretary-General's proposal that ways should be explored of empowering human rights bodies to bring massive human rights violations to the attention of the Security Council.

8. The Committee is also considering, in cases where it had been unable to obtain required information and as a follow-up to recommendations included in earlier concluding comments, to request the State party concerned to agree to receive a mission, consisting of one or two members of the Committee, with a view to collecting information the Committee needs to carry out its functions under the Covenant. Such a decision would only be taken after the Committee had satisfied itself that no adequate alternative approach was available and that such an approach was warranted by information in the Committee's possession.

General comments

9. The practice of preparing general comments on selected articles of the Covenant was initiated by the Committee in 1981, after it had acquired considerable experience in examining State reports. General comments draw attention to certain aspects of the Covenant but do not purport to be restrictive or to attribute any priority among the different aspects in terms of implementation. They are intended to make the Committee's experience available for the benefit of all States parties, so as to promote more effective

implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure; and to stimulate the activities of States parties and international organizations in the promotion and protection of human rights. General comments are also intended to be of interest to other States, especially those preparing to become parties to the Covenant, and generally to strengthen cooperation among States in the universal promotion and protection of human rights.

10. To date, the Committee has adopted 21 general comments. It is currently discussing a draft general comment relating to article 18 of the Covenant (freedom of conscience and religion), which it expects to adopt at its forty-eighth session in July 1993, and has initiated work on a draft general comment relating to article 25 (political rights). The Committee has also decided to start preliminary work on a general comment relating to article 27 of the Covenant (rights of persons belonging to minorities) and on a general comment that would address issues relating to reservations made upon ratification or accession to the Covenant or to its Optional Protocol.

Timely submission of reports

11. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized and enumerated in part III of the Covenant. In connection with this provision, the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. According to article 40, paragraph 1, of the Covenant, each State party is required to submit within one year of its entry into force an initial report to the Human Rights Committee and such subsequent reports as may be requested by the Committee. Based on a decision adopted by the Committee in 1981 and amended in 1982 (CCPR/C/19/Rev.1), States parties are required to submit periodic reports to the Committee every five years from the date the initial report was due.

12. The timely submission of reports under article 40 of the Covenant is fundamental for the effective discharge by the Committee of its functions under the Covenant, since such reports form the basis of the dialogue between the Committee and the States parties and delays result in the interruption of the implementation process. Yet serious delays in the submission of reports by States parties have occurred throughout the period since the Committee's establishment. Delays may be attributable, in part, to the fact that the International Covenant on Civil and Political Rights encompasses a variety of rights, which can render the preparation of reports more difficult than in the case of some of the other international human rights instruments. The cumulative burden of producing reports to several international human rights treaty bodies, the insufficient awareness that reporting is an obligation which States parties are required to fulfil under article 40 of the Covenant, the shortage of qualified government staff, the lack of an efficient administrative structure and of coordination between different administrative bodies dealing with similar issues, and the lack of a political will are other frequently cited contributing factors.

13. The situation facing the Committee has worsened over the years, particularly since third periodic reports became due in 1988. The number of overdue reports, as at 1 May 1993, reached 15 initial, 26 second periodic and 37 third periodic reports, involving a total of 65 States parties. (An annex to the Committee's annual report to the General Assembly provides full details in this regard.) The fact that, since 1993, fourth periodic reports have also

started to become due is expected to lead to a further increase in overdue reports.

14. The Committee has resorted over the years to various remedial actions to improve compliance by States parties with their reporting obligations under article 40 of the Covenant. Written reminders are regularly dispatched to States parties whose reports are overdue, defaulting States parties have been listed in the Committee's annual report to the General Assembly, permanent representatives of States parties have in some cases been invited to discuss their countries' reporting difficulties with the Committee, officers of the Committee are regularly requested to contact permanent representatives on the Committee's behalf, and the Chairman of the Committee has dispatched special letters to the Foreign Ministers of States parties whose reports have been overdue for a long period. In one case, a member of the Committee visited one of the States parties to provide expertise and advice, with a view to facilitating the discharge of its reporting obligations.

15. Despite such efforts, the situation has continued to worsen, seriously undermining the objectives of the Covenant. The Committee wishes to express the hope that the World Conference will emphasize the importance of adequate and timely reporting by all States parties to the Covenant and to other human rights instruments, and take such further action to promote improved compliance with reporting obligations as may be appropriate.

B. Follow-up on Views adopted under the Optional Protocol to the International Covenant on Civil and Political Rights

1. Under the Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee may examine individual communications from persons under the jurisdiction of States parties to the Protocol. Since the inception of the procedure in 1977, 546 communications have been registered, and consideration of 156 of them has been concluded with the adoption of decisions on the merits, known as "Views under article 5, paragraph 4, of the Optional Protocol". In 118 cases, the Committee found violations of provisions of the Covenant. Moreover, 165 communications have been declared inadmissible, and consideration of 87 cases has been discontinued; 138 communications are currently pending. 1/

2. The Optional Protocol does not provide for the enforcement of the Committee's decisions. In fact, it remains silent on this issue. However, the Committee's Views are in the nature of recommendations on the basis of which States parties should endeavour to settle the cases in question. As States adhere to the Optional Protocol on a voluntary basis, it is reasonably assumed that they would accept and implement the Committee's recommendations. None the less, the absence of an explicit provision in the Optional Protocol on enforcement may be considered a major shortcoming in the implementation machinery established by the Covenant.

3. The record of States parties' compliance with the Committee's Views under the Optional Protocol during the first 13 years has, by and large, been satisfactory. However, during the same period, the Committee has also noted that many States have not provided information about the measures they had taken to give effect to the Committee's Views; therefore, at its thirty-ninth session, in July 1990, the Committee created the mandate of a special rapporteur for follow-up on Views to monitor States parties' compliance with the Committee's Views and to report to the Committee on a regular basis. 2/

4. The purpose of this contribution is to highlight the Committee's experience with the follow-up procedure and to formulate a number of recommendations for consideration by the World Conference. Strengthening existing and creating new follow-up mechanisms should be considered a necessity and indeed a priority if Governments and public opinion are to retain faith in the effectiveness of the United Nations human rights implementation machinery.

5. The Committee considers that follow-up activities are not only compatible with its mandate but are indeed essential if the Committee is expected to discharge the responsibilities entrusted to it under the Optional Protocol. The preamble to the Optional Protocol declares that the Committee receives and

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1/ Statistical survey of communications, 26 May 1993.

2/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex XI. Cf. A. de Zayas, "The follow-up procedure of the United Nations Human Rights Committee", The Review (International Commission of Jurists), vol. 47 (Dec. 1991), pp. 28-35; M. Schmidt, "Quelques remarques à propos de la procédure de suivi des constatations du Comité des droits de l'homme" (to be published, autumn 1993).

considers communications "in order further to achieve the purposes of [the Covenant] and the implementation of its provisions". This certainly allows the Committee to engage in exchanges with States parties about their reactions to the Committee's Views. The International Court of Justice has stated that even in the absence of specific enabling powers, an international instance may act in ways not specifically forbidden, so as to ensure the attainment of its purposes. 3/

6. Moreover, the word "consider" in article 5, paragraph 1, of the Optional Protocol need not be taken as meaning consideration of a case only until the adoption of a final decision, but consideration in the sense of engaging in those tasks deemed necessary to ensure implementation of the provisions of the Covenant. As a matter of fact, in certain circumstances, the non-granting of a remedy recommended by the Committee may amount to a fresh violation of a provision of the Covenant.

7. The Special Rapporteur's functions have been set out as follows:

(a) To recommend to the Committee action upon all letters from individuals who have been found by the Committee to be victims of a violation of their rights and who contend that no appropriate remedy has been afforded to them;

(b) To communicate with States parties and, if he deems it appropriate, with victims, in respect of such letters received by the Committee;

(c) To seek to obtain information on any action taken by States parties in relation to Views adopted by the Committee, when such information has not otherwise been made available;

(d) To assist the Committee's Rapporteur in the preparation of the relevant sections of the annual report of the Committee;

(e) To advise the Committee on appropriate deadlines for the receipt of information on remedies adopted by States parties found to have violated provisions of the Covenant;

(f) To submit regularly to the Committee recommendations on possible ways to make the follow-up procedure more effective. 4/

8. From the autumn of 1990 onwards, requests for follow-up information have been sent to all those States parties in respect of which the Committee had adopted decisions with a finding of violations of the Covenant. At the beginning of the Committee's forty-seventh session (March 1993), follow-up information had been received in respect of 71 Views adopted by the Committee; no information had been received in respect of 37 Views. It should also be noted that in many instances, the Secretariat has received information from authors to the effect that the Committee's Views have not been implemented.

9. While it is obviously difficult to categorize follow-up replies, it is possible to state that about one fourth of the replies received thus far are satisfactory, in that they display a willingness on the part of the State party

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3/ See Case of Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports, 20 July 1962, pp. 150-167.

4/ See footnote 2 *supra*.

concerned to implement the Committee's Views or to offer the applicant a remedy. Between 35 per cent and 40 per cent of the replies cannot be considered satisfactory, as they either do not address the Committee's recommendations at all or only concern one aspect thereof, or else indicate that the State party is unwilling to grant the remedy recommended by the Committee. Four replies explicitly challenge and reject the Committee's findings, either on factual or legal grounds. The remainder of replies is either couched in general terms, promises an investigation of the matter considered by the Committee, or reiterates the State party's position during the proceedings.

10. The overall results of the first three years' experience with the follow-up procedure are not fully satisfactory. Some States have indeed replied that they are implementing the Committee's recommendations, e.g. by releasing from detention victims of human rights violations, by awarding them compensation for the violations suffered, by amending legislation found to be incompatible with the Covenant, or by offering the complainants other remedies. In some instances, States have indicated that compensatory payments to victims have been made ex gratia (for example, if the domestic legal system does not permit compensation in another manner).

11. Thus far, the Committee has considered follow-up information on a confidential basis; reports on follow-up activities have not been made public and debates on follow-up matters have taken place in closed meetings.

12. During its forty-seventh session in March-April 1993, however, the Committee agreed that information on follow-up activities should in principle be made public. 5/ Publicity for follow-up activities would not only be in the interest of the victims of violations of provisions of the Covenant, but could also serve to enhance the authority of the Views and provide an incentive for States parties to implement them. Those States unwilling to cooperate under the follow-up procedure would be listed in an appendix to the annual report; in appropriate instances, and notably where a State party challenges the Committee's findings, the Committee would adopt an official response to the State party concerned.

13. The Committee is also actively considering other ways and means of increasing the effectiveness of the follow-up procedure. In this context, the following issues deserve attention.

14. Above all, States parties are encouraged to inform the Committee about the modalities they have adopted, under their domestic legal system, to implement the Committee's Views under the Optional Protocol.

15. In addition, the Committee takes note of, and endorses, the recommendation formulated by the persons chairing the United Nations human rights treaty bodies during their meeting on 22 and 23 April 1993, in respect of part V (Implementation and monitoring needs), paragraph 6, of the draft programme of action submitted to the Preparatory Committee for the World Conference on Human Rights. 6/ It proposed, in fact, that "Views and recommendations expressed by the treaty bodies in relation to individual communications should be fully respected". To call further upon States to accept such Views as binding would

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5/ See CCPR/C/SR.1227/Add.1.

6/ See A/CONF.157/PC/62/Add.15, p. 8.

be another, desirable, step. To that end, the addition of a new paragraph to article 5 of the Optional Protocol could be envisaged. Such a paragraph might read as follows:

> "States Parties undertake to comply with the Committee's Views under the Optional Protocol".

16. Furthermore, it could be envisaged to broaden the competence of the Special Rapporteur on the follow-up of Views to include a fact-finding mandate. Thus, the Special Rapporteur could be endowed with the authority to make inquiries *in situ* as to what any given State party has done, or failed to do, to give effect to the Committee's Views. Such a fact-finding function, while novel, would be compatible with the Committee's mandate under the Optional Protocol. Such fact-finding activities would in principle be restricted to instances of non-compliance with the Committee's Views, or to cases on which no follow-up information is received from the authorities. Before engaging in such fact-finding activities, the Special Rapporteur should consult with the authorities of the State party concerned.

17. The publicity given to follow-up activities by a treaty body, such as the follow-up machinery already established by the Human Rights Committee, should be effectively utilized. This can be done, for example, by including a chapter on follow-up in the annual report of the respective committees.

18. It may also be envisaged that some form of technical assistance be extended to those States which, for whatever reason, experience difficulties in implementing the decisions of the respective committees. Upon request of a State party, for instance, the committee concerned could mandate one of its members to advise the State party's authorities on the most appropriate means to give effect to a decision.

19. Finally, the Human Rights Committee emphasizes that the implementation of a follow-up mandate requires appropriate human and material resources.

ANNEX XI

List of States parties' delegations that participated in the consideration of their respective reports by the Human Rights Committee at its forty-sixth, forty-seventh and forty-eighth sessions

BURUNDI	Representative	H.E. Mrs. Colette Samoya Kirura Ambassador Permanent Representative of Burundi to the United Nations Office at Geneva
	Alternate Representative	Mr. Marc Birihanyuma President of the Supreme Court
	Adviser	Mr. Charles Ndikuriyo Deputy-Director of the Centre for the Promotion of Human Rights
SENEGAL	Representative	Mr. Mamadou Lamine Fofana Magistrate Central Inspectorate, Judicial Services of the Ministry of Justice
	Advisers	Mr. Balla Dia Chargé d'affaires a.i. Permanent Mission of Senegal to the United Nations Office at Geneva
		Mr. Abdul Aziz Ndiaye Counsellor Permanent Mission of Senegal to the United Nations Office at Geneva
LUXEMBOURG	Representative	Mr. Georges Thorn Honorary President of the Council of State of Luxembourg
	Advisers	Mr. Paul Duhr Deputy Permanent Representative of Luxembourg to the United Nations Office at Geneva
		Mr. Carlo Krieger Legation Attaché Ministry of Foreign Affairs of Luxembourg
UNITED REPUBLIC OF TANZANIA	Representative	H.E. Mr. Amir Habib Jamal Ambassador Permanent Representative of the United Republic of Tanzania to the United Nations Office at Geneva

	Advisers	Mr. Msuya Mangashi Minister-Counsellor Permanent Mission of the United Republic of Tanzania to the United Nations Office at Geneva
		Mrs. Elizabeth Mrema First Secretary Permanent Mission of the United Republic of Tanzania to the United Nations Office at Geneva
IRAN (ISLAMIC REPUBLIC OF) (at the forty-sixth session)	Representative	H.E. Mr. Sirous Nasseri Ambassador Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva
	Alternate Representative	Dr. Hussain Mehrpour Representative of the Judicature of the Islamic Republic of Iran
	Advisers	Mr. Hamidreza Hosseini Director Human Rights Department Ministry of Foreign Affairs
		Mr. Fereydoon Tahsildoost Legal Adviser Ministry of Justice
IRAN (ISLAMIC REPUBLIC OF) (at the forty-seventh session)	Representative	H.E. Mr. Sirous Nasseri Ambassador Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva
	Alternate Representative	Dr. Hussain Mehrpour Special Envoy of the Judicature of the Islamic Republic of Iran
	Advisers	Mr. Khosrow Bijani Executive Deputy of the Judicature of the Islamic Republic of Iran
		Mr. Hamidreza Hosseini Director Human Rights Department Ministry of Foreign Affairs
		Mr. Mohammad Ali Mottaghi-Nejad Deputy Director Human Rights Department Ministry of Foreign Affairs

		Mr. Mehdi Yazdi Adviser
		Mr. Kamayestani Adviser
		Mr. Amir Hossein Zamaninia Counsellor Permanent Mission of the Islamic Republic of Iran to the United Nations
IRAN (ISLAMIC REPUBLIC OF) (at the forty-eighth session)	Representative	H.E. Dr. Hussain Mehrpour Special Envoy of the head of the Judiciary
	Advisers	H.E. Mr. Kia Tabatabaee Ambassador Permanent Mission of the Islamic Republic of Iran to the United Nations Office at Geneva
		H.E. Mr. Hussain Karimi Judicial Deputy of the Judiciary
		Mr. Mohammad Ali Mottaghi-Nejad Deputy Director Human Rights Department Ministry of Foreign Affairs
		Mr. Mostafa Alaee First Secretary Permanent Mission of the Islamic Republic of Iran to the United Nations Office at Geneva
VENEZUELA	Representative	H.E. Mr. Horacio Arteaga Ambassador Permanent Representative of Venezuela to the United Nations Office at Geneva
	Advisers	Mrs. Raquel Poitevien Assistant Prosecutor, Office of the Public Prosecutor
		Mrs. Maria E. Ruesta de Furter Counsellor Permanent Mission of Venezuela to the United Nations Office at Geneva
		Mr. Wilmer Méndez Second Secretary Permanent Mission of Venezuela to the United Nations Office at Geneva

BOSNIA AND HERZEGOVINA	Representative	Dr. Muhamed Filipovic Vice-President of the Academy of Science and Art Member of the Assembly of the Republic of Bosnia and Herzegovina Member of the State Delegation to the International Conference on the Former Yugoslavia
	Advisers	Dr. Kasim Jrnka Member of the Constitutional Court of the Republic Member of the State Delegation to the International Conference on the Former Yugoslavia
		Mr. Mustafa Bijedic Chargé d'affaires Permanent Mission of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva
CROATIA	Representative	Mr. Smiljan Simac Assistant Minister of Foreign Affairs
	Advisers	Prof. Budislav Vukas Faculty of Law University of Zagreb
		Prof. Davor Krapac Faculty of Law University of Zagreb
FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)	Representative	Dr. Konstantin Obradovic Deputy Federal Minister for Human Rights and Ethnic Minorities
	Advisers	Ms. Sladjana Prica Expert Federal Ministry for Foreign Affairs
		Mr. Miroslav Milosevic Counsellor Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva
		Mrs. Olga Spasic Third Secretary Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva
NIGER	Representative	Mr. Abdou Abarry Counsellor Permanent Mission of Niger to the United Nations

	Adviser	Mrs. Suzanne Maikarfi Counsellor Permanent Mission of Niger to the United Nations
DOMINICAN REPUBLIC	Representative	H.E. Mr. Miguel Pichardo Olivier Ambassador Division of International Studies
	Adviser	H.E. Mrs. Rhadys Abreu de Polanco Ambassador for Human Rights External Relations Secretariat
URUGUAY	Representative	Dr. Julio César Jaúregui Special Representative to the Human Rights Committee (appointed by the President)
GUINEA	Representative	H.E. Mr. Mohamed Aly Thiam Ambassador Director of Judicial and Consular Affairs
IRELAND	Representative	H.E. Mr. Harold A. Whelehan, S.C. Attorney-General of Ireland
	Advisers	H.E. Mr. John Swift Ambassador Permanent Representative of Ireland to the United Nations Office at Geneva
		Mr. Kevin O'Grady Assistant Secretary-General Department of Justice
		Mr. Diarmuid Cole Principal Officer Department of Justice
		Mr. James Hamilton Legal Assistant Office of the Attorney-General
		Mr. Pat Nolan Principal Officer Department of Equality and Law Reform
		Mr. Donal Denham Deputy Head of United Nations and Human Rights Section Department of Foreign Affairs
		Ms. Emer Kilcullen Assistant Legal Adviser Department of Foreign Affairs

		Mr. Colm O. Floinn First Secretary Permanent Mission of Ireland to the United Nations Office at Geneva
		Mr. Brian Tisdall Attaché Permanent Mission of Ireland to the United Nations Office at Geneva
HUNGARY	Representative	Mr. Károly Bárd Deputy State Secretary Ministry of Justice
	Alternate Representative	H.E. Mr. Endre Lontai Deputy Permanent Representative of Hungary to the United Nations Office at Geneva
	Advisers	Mr. Sándor Szapora Second Secretary Permanent Mission of Hungary to the United Nations Office at Geneva
		Mrs. Ágnes Hevesi Third Secretary Ministry of Foreign Affairs
EGYPT	Representative	H.E. Dr. Mounir Zahran Permanent Representative of Egypt to the United Nations Office at Geneva
	Advisers	Dr. Madga Shahin Plenipotentiary Minister Permanent Mission of Egypt to the United Nations Office at Geneva
		Mr. Mohamed Fahmy Counsellor Office of the Procurator-General
		Mr. Sanaa Khalil Counsellor Ministry of Justice
		Mr. Ibrahim Hammad Ministry of the Interior
		Mr. Ashraf Elmoafi Second Secretary Permanent Mission of Egypt to the United Nations Office at Geneva
		Mr. Aly Sirry Third Secretary Permanent Mission of Egypt to the United Nations Office at Geneva

BULGARIA	Representative	Mr. Lyuben Koulishev Counsellor to the President of the National Assembly
	Advisers	H.E. Mr. Valentin Dobrev Permanent Representative of Bulgaria to the United Nations Office at Geneva
		Mr. Plamen Bogoev Legal Counsel to the President of the Republic
		Mr. Lyuben Velinov Secretary of the Legislation Council with the Ministry of Justice
		Mr. Peter Kolarov First Secretary Ministry of Foreign Affairs
		Mr. Anguel Anastassov First Secretary Permanent Mission of Bulgaria to the United Nations Office at Geneva

Annex XII

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

[To be issued under the symbol A/48/40 (Part II)]

Annex XIII

DECISIONS OF THE HUMAN RIGHTS COMMITTEE DECLARING COMMUNICATIONS INADMISSIBLE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

[To be issued under the symbol A/48/40 (Part II)]

Annex XIV

LIST OF DOCUMENTS ISSUED DURING THE REPORTING PERIOD

CCPR/C/28/Add.15	Second periodic report of the Islamic Republic of Iran
CCPR/C/28/Add.16	Second periodic report of the Libyan Arab Jamahiriya
CCPR/C/32/Add.17	Second periodic report of Bulgaria
CCPR/C/51/Add.7	Second periodic report of Egypt
CCPR/C/58/Add.14	Third periodic report of the Dominican Republic
CCPR/C/58/Add.15	Third periodic report of Romania
CCPR/C/63/Add.1	Second periodic report of Cameroon
CCPR/C/64/Add.9	Second periodic report of Costa Rica
CCPR/C/68/Add.2/Corr.1	Initial report of Burundi
CCPR/C/68/Add.3	Initial report of Ireland
CCPR/C/70/Add.3	Third periodic report of the Dominican Republic
CCPR/C/70/Add.4	Third periodic report of Costa Rica
CCPR/C/74/Rev.2	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1992: note by the Secretary-General
CCPR/C/76/Add.1	Third periodic report of Jordan
CCPR/C/76/Add.2	Third periodic report of Mexico
CCPR/C/79/Add.1	Comments of the Human Rights Committee on States parties' reports - Algeria
CCPR/C/79/Add.2	Comments of the Human Rights Committee on States parties' reports - Colombia
CCPR/C/79/Add.3	Comments of the Human Rights Committee on States parties' reports - Belgium
CCPR/C/79/Add.4	Comments of the Human Rights Committee on States parties' reports - Yugoslavia
CCPR/C/79/Add.5	Comments of the Human Rights Committee on States parties' reports - Belarus
CCPR/C/79/Add.6	Comments of the Human Rights Committee on States parties' reports - Republic of Korea
CCPR/C/79/Add.7	Comments of the Human Rights Committee on States parties' reports - Mongolia

CCPR/C/79/Add.8	Comments of the Human Rights Committee on States parties' reports - Peru
CCPR/C/79/Add.9	Comments of the Human Rights Committee on States parties' reports - Burundi
CCPR/C/79/Add.10	Comments of the Human Rights Committee on States parties' reports - Senegal
CCPR/C/79/Add.11	Comments of the Human Rights Committee on States parties' reports - Luxembourg
CCPR/C/79/Add.12	Comments of the Human Rights Committee on States parties' reports - Tanzania
CCPR/C/79/Add.13	Comments of the Human Rights Committee on States parties' reports - Venezuela
CCPR/C/79/Add.14	Comments of the Human Rights Committee on States parties' reports - Bosnia and Herzegovina
CCPR/C/79/Add.15	Comments of the Human Rights Committee on States parties' reports - Croatia
CCPR/C/79/Add.16	Comments of the Human Rights Committee on States parties' reports - Federal Republic of Yugoslavia (Serbia and Montenegro)
CCPR/C/79/Add.17	Comments of the Human Rights Committee on States parties' reports - Niger
CCPR/C/79/Add.18	Comments of the Human Rights Committee on States parties' reports - Dominican Republic
CCPR/C/79/Add.19	Comments of the Human Rights Committee on States parties' reports - Uruguay
CCPR/C/79/Add.20	Comments of the Human Rights Committee on States parties' reports - Guinea
CCPR/C/79/Add.21	Comments of the Human Rights Committee on States parties' reports - Ireland
CCPR/C/79/Add.22	Comments of the Human Rights Committee on States parties' reports - Hungary
CCPR/C/79/Add.23	Comments of the Human Rights Committee on States parties' reports - Egypt
CCPR/C/79/Add.24	Comments of the Human Rights Committee on States parties' reports - Bulgaria
CCPR/C/79/Add.25	Comments of the Human Rights Committee on States parties' reports - Islamic Republic of Iran
CCPR/C/81/Rev.1	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1993: note by the Secretary-General

CCPR/C/82	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1993: note by the Secretary-General
CCPR/C/83	Consideration of reports submitted by States parties under article 40 of the Covenant - third periodic reports of States parties due in 1993: note by the Secretary-General
CCPR/C/84	Consideration of reports submitted by States parties under article 40 of the Covenant - fourth periodic reports of States parties due in 1993: note by the Secretary-General
CCPR/C/87	Report submitted by Croatia pursuant to a special decision taken by the Committee
CCPR/C/88	Report submitted by the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to a special decision taken by the Committee
CCPR/C/89	Report submitted by Bosnia and Herzegovina pursuant to a special decision taken by the Committee
CCPR/C/80	Provisional agenda and annotations - forty-sixth session
CCPR/C/85	Provisional agenda and annotations - forty-seventh session
CCPR/C/86	Provisional agenda and annotations - forty-eighth session
CCPR/C/SR.1177-1205	Summary records of the forty-sixth session
CCPR/C/SR.1206-1233	Summary records of the forty-seventh session
CCPR/C/SR.1234-1262	Summary records of the forty-eighth session

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